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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 389

THE KNOX NATIONAL FARM LOAN ASSOCIATION AND THE FEDERAL LAND BANK OF LOUISVILLE, PETITIONERS,

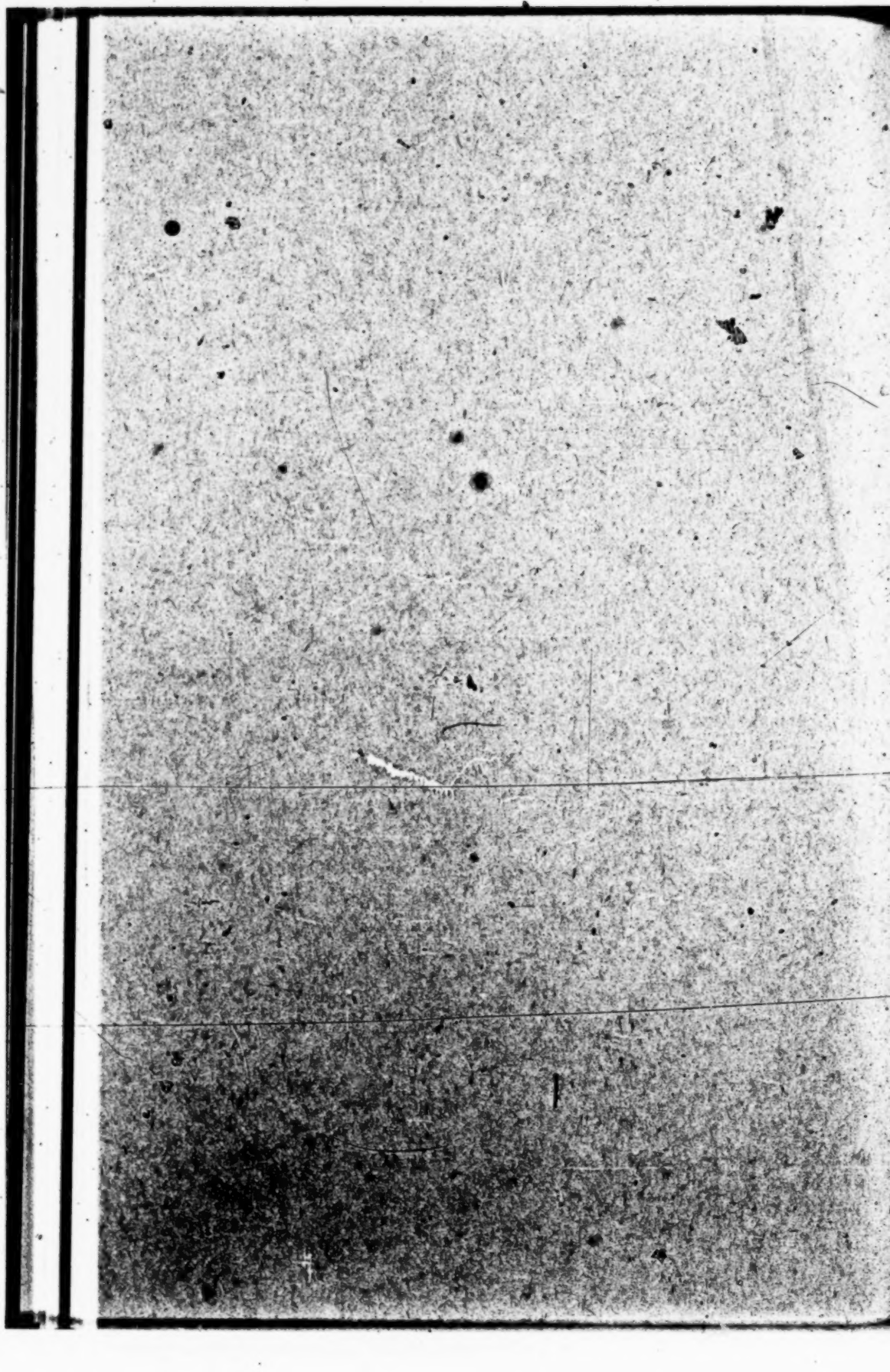
vs.

ARTHUR C. PHILLIPS

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OHIO

PETITION FOR CERTIORARI FILED SEPTEMBER 23, 1936.

CERTIORARI GRANTED NOVEMBER 9, 1936.



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IN COURT OF COMMON PLEAS OF KNOX COUNTY

No. 15070

ARTHUR C. PHILLIPS, Plaintiff,

vs.

THE KNOX NATIONAL FARM LOAN ASSOCIATION and THE FEDERAL LAND BANK OF LOUISVILLE, Defendants

PETITION—Filed August 14, 1934

Plaintiff says that each of the defendants is a corporation organized and existing under the laws of the United States of America, and under the provisions of law known as the Federal Farm Loan Act; that the principal office of said The Knox National Farm Loan Association is in the city of Mt. Vernon, Knox County, Ohio, and the principal office of the defendant The Federal Land Bank of Louisville is in the city of Louisville, Kentucky.

Plaintiff further says that he owns and is in actual possession of the following real estate, towit:

First Tract: Being Lot No. 24 in the First Quarter, Fifth Township and Fifteenth Range in the United States Military District, according to a sub-divisional survey of said Quarter Township made by S. W. Farquhar, Esq., and duly recorded in Book P, pages 574-5-6 of the Records of Deeds of Knox County, Ohio, said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the County of Knox and State of Ohio and in the First Quarter of the Fifth Township, Fifteenth Range, United States Military Lands, situated in Knox County, and the state aforesaid, and being taken off the South west portion of Lot 23, commencing at the southwest corner of said lot, and running north to the southwest corner of the lot owned by Williams Jones and wife; thence east to the east line of said lot; thence south to the north west corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence west along the south line of said lot 23 to the place of beginning, containing 43 acres, be the same more or less.

Third Tract: Lying and being in the county of Knox and State of Ohio, towit: 30 acres of land out of the southeast corner of lot 23 in Rathbone section, so-called; being in the first Quarter, Township 5, Range 15, United States Mili- [fol. 4] tary lands, in Knox County, Ohio, and more particularly described as follows: Beginning at the south east corner of Lot #23, running north on the line between lots 23 and 22, a distance equal to ⅔ the length of said line being 97⅓ poles; thence west such distance as to include the said 30 acres by running a line south to the south boundary of lot 23, which said last line is to be run parallel to the said line between lots 23 and 22.

Plaintiff says that he purchased said real estate from, and received deed conveying fee simple title thereof from, Constant Roberts Child, R. F. Child, Enid M. Roberts and Marshall B. Roberts, dated October 24, 1927, by the terms of which purchase and said deed plaintiff assumed and agreed to pay a certain mortgage upon said land to said defendant, The Federal Land Bank of Louisville, dated May 18, 1925, recorded in Vol. 75, page 606 of the Mortgage Records of said County, given by said grantors to secure the note of said grantors in favor of said defendant, The Federal Land Bank of Louisville, for the principal sum of $5300.00, and bearing interest at the rate of 5½% per annum, and upon which note, at the time of the execution and delivery of said deed to said plaintiff there remained due a balance of $5160.00.

Plaintiff further says that when the grantors, in the deed to him of said land, executed and delivered said mortgage to said defendant, The Federal Land Bank of Louisville, they were required by each of the defendants in this action to purchase fifty-three (53) shares of the capital stock of the defendant, The Knox National Farm Loan Association, and deposit same with said Association as collateral security for the payment of their said loan from said defendant, The Federal Land Bank of Louisville, pursuant to the provisions of the laws of said United States of America, known as the Federal Farm Loan Act aforesaid. Plaintiff further says that upon his purchase of the real estate hereinabove mentioned, consisting of a farm, and the assumption of the mortgage aforesaid, that said 53 shares of the [fol. 5] capital stock of said The Knox National Farm

Loan Association of the par value of $5.00 per share were purchased by, and transferred to, him, for the sum of $265.00; that said The Knox National Farm Loan Association, in consideration of his assumption of said mortgage debt and acceptance of the transfer of said stock, and the deposit of same with said The Knox National Farm Loan Association as collateral security for the payment of the loan aforesaid, agreed that said plaintiff should be entitled to all of the rights and privileges theretofore agreed upon and given to the said original grantors in said deed to this plaintiff in respect to said 53 shares of said capital stock of the defendant, The Knox National Farm Loan Association, and that said rights included an agreement on the part of said Knox National Farm Loan Association that said stock would be accepted at its face value on final payment of said loan.

Plaintiff further says that on the date of the delivery to him of the deed aforesaid, towit, October 24, 1927, said defendant, Knox National Farm Loan Association executed and delivered to him a receipt for said shares of stock and included therein its written statement and agreement that said shares would be accepted at face value on final payment of said loan; and that the loan therein mentioned and referred to was the same hereinabove mentioned evidenced by the note and mortgage to the defendant, The Federal Land Bank of Louisville, assumed by plaintiff in connection with his purchase of the real estate as hereinabove set forth.

Plaintiff further says that from time to time during the period between said October 24, 1927, and March 25, 1933, he made such payments to said defendant, The Federal Land Bank of Louisville in reduction of said loan; that on said last mentioned date the entire balance of principal and interest due thereon amounted to less than an aggregate [fol. 6] amount of $2122.50; that on said last mentioned date he paid into the hands of one E. B. Tucker, as Secretary and Treasurer of said defendant, The Knox National Farm Loan Association, and as Agent for said Knox County, Ohio, of said defendant, The Federal Land Bank of Louisville, the sum of $1857.50, and surrendered at face value of $265.00 his 53 shares aforesaid of the capital stock of said defendant, Knox National Farm Loan Assiciation; and that said payment and said surrender of said stock

fully paid and satisfied said loan, and that he thereupon made demand and request upon said defendants to accept said surrender of said stock at its face value, and for the cancellation and surrender of said note and mortgage held by the defendant, The Federal Land Bank of Louisville, evidencing the loan hereinabove mentioned.

Plaintiff says that said defendants, and each of them, have ever since failed and neglected to accept said surrender of said stock and apply same upon said note at its fave value, in accordance with said demand, and have failed and neglected to cancel and surrender the note and mortgage evidencing said loan, in accordance with said demand, and the law applicable to said transaction, although frequently requested by plaintiff so to do.

Plaintiff further says that said defendant, The Knox National Farm Loan Association deposited the said 53 shares of its capital stock belonging to this plaintiff, as hereinabove mentioned, with said defendant, The Federal Land Bank of Louisville, as collateral security for the payment of the loan hereinabove mentioned and in accordance with the provisions of the laws of the United States of America, known as the Federal Farm Loan Act, and that by the provisions of said laws, it is required that said shares of stock be paid off at par and retired upon full payment of the mortgage loan upon which said shares may [fol. 7] be deposited to secure, in the manner aforesaid.

Plaintiff further says that each of said defendants claim and represent to this plaintiff that said defendant, The Knox National Farm Loan Association, has made such losses in the operation of its business that its capital stock is impaired, and that it is continuing operations with the risk of further losses and further impairment of its capital stock, and that holders of said stock may become subject to assessment thereon for the purpose of paying liabilities heretofore created, and now being created, by said defendant, The Knox National Farm Loan Association. Plaintiff says that if said defendant, The Knox National Farm Loan Association is permitted to continue its said operations that it may result in further losses and further impairment of said capital stock, and may result in an assessment upon stockholders to meet said loss and said impairment up to a possible amount equal to the par value of said stock.

Wherefore, Plaintiff prays that said defendant, The Federal Land Bank of Louisville, be required to pay off and retire said 53 shares of capital stock of Knox National Farm Loan Association, owned by said plaintiff, as hereinabove mentioned, at its par value of $5.00 per share, in acordance with the terms of the agreement hereinabove set forth, and the laws of said United States of America, hereinabove mentioned, known as the Federal Farm Loan Act; that said defendant, The Federal Land Bank of Louisville, be ordered and required to surrender the note and mortgage hereinabove mentioned and described with a proper cancellation duly endorsed upon said mortgage, and that his title to the real estate hereinabove mentioned and described may be quieted against said mortgage and against any claim or claims of said defendants in respect to same; and that a Receiver may be appointed to take charge of the business and property of said defendant, The Knox [fol. 8] National Farm Loan Association, and that said Receiver may be ordered to wind up and liquidate its business, pay its obligations and distribute its net assets to its stockholders according to law. Plaintiff further prays for all other relief that may be proper, either in law or in -quity.

Arthur C. Phillips, Plaintiff.

Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.

Precipe

To the Clerk:

Please issue summons in the foregoing action for the defendants to the Sheriff of Knox County, Ohio, returnable according to law, and endorse thereon:

"Action to cancel mortgage, quiet title, for an order to appoint a Receiver of defendant, The Knox National Farm Loan Association, and to wind up and liquidate its business, and for equitable relief."

Henry C. Devin, Attorney for Plaintiff.

[fol. 9] Waiver

The undersigned, defendants in above entitled action, hereby waives the issuance and service of summons upon

us in said action, and voluntarily enter our presence therein.

The Federal Land Bank of Louisville, by —— ——.
Its Attorney.

[fol. 10] In Court of Common Pleas of Knox County

Summons

Gen'l Code, Secs. 11281, 11883

Common Pleas Court

The State of Ohio, Knox County, to the Sheriff of said County:

You are hereby commanded to notify The Knox National Farm Loan Association and The Federal Land Bank of Louisville, that they have been sued by Arthur C. Phillips in the Court of Common Pleas of Knox County, and must answer by the 15th day of Sept. A. D. 1934, or the petition of said plaintiff will be taken as true, and judgment rendered accordingly.

Said Sheriff will make due return of this summons on the 27th day of August, 1934.

Witness my hand and the seal of said Court, this 15th day of August, 1934.

Chas. W. Sheedy, Clerk, by Mary Brock, Deputy.
(Seal.)

Sheriff's Return

The State of Ohio,
Knox County:

Received this Writ Aug. 15th, 1934 at 2 o'clock P. M., and on August 23rd., 1934, I served the within named The Knox National Farm Loan Assn., by personally handing to Vincent Welker, as President of said Association, a true copy thereof with all the endorsements thereon.

After a careful and diligent search, the within named, The Federal Land Bank of Louisville, its agent or officers could not be found in my county.

F. D. Mason, Sheriff.

[fol. 11] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ANSWER OF THE KNOX NATIONAL FARM LOAN ASSOCIATION—
Filed October 16, 1934

Comes now the defendant, The Knox National Farm Loan Association, hereinafter referred to as the Association, and for its separate answer to the plaintiff's petition alleges and shows to the Court:

That this defendant denies each and every allegation, matter and thing in said petition contained, except as hereinafter specifically admitted, qualified or explained.

That the defendant, The Knox National Farm Loan Association, is a body corporate organized and existing under and by virtue of the Act of Congress approved July 17, 1916, known as the Federal Farm Loan Act, and acts amendatory thereof (12 U. S. C. Chapter 7); that said Association is a co-operative, membership corporation, organized under said Act for the purpose of enabling its members to obtain loans on the security of qualified farm mortgaged indorsed by such Association, from The Federal Land Bank of Louisville; that the capital stock of said Association is owned entirely by members and that membership therein is confined to farmers borrowing, as aforesaid, through said Association from said Bank.

That the defendant, The Federal Land Bank of Louisville, is a body corporate organized and existing under and by virtue of the Act of Congress approved July 17, 1916, [fol. 12] known and cited as the Federal Farm Loan Act and acts amendatory thereof, chartered, authorized and empowered to do business in the states of Ohio, Indiana, Kentucky and Tennessee, the same constituting and comprising the Fourth Federal Land Bank District, and that said Bank has its principal place of business in the city of Louisville, Kentucky.

That pursuant to the terms of said Federal Farm Loan Act, said Bank is engaged in the business of loaning money to farmers upon the security of qualified first mortgages on farm lands situated in the states of its district; that said loans are made almost entirely through and to members of separate and distinct corporations known as, and referred to in said Act as National Farm Loan Associations,

including defendant Association; and that under the provisions of said Act, each such association is required upon obtaining a loan for one of its members to subscribe and pay for stock in said Bank in an amount equal to 5% of such loan and to deposit such stock with said Bank as collateral security for such loan.

That on or about November 5, 1924, Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs being the owners or about to become the owners of the farm premises described in plaintiff's petition; did duly make an application in writing for membership in said Association, and did subscribe to the capital stock of said Association in the amount of $265.00 and at the same time did make application to The Federal Land Bank of Louisville for a loan, through said Association, in the sum of $5,300.00, under the terms, provisions and conditions of the aforesaid Federal Farm Loan Act, and the rules and regulations prescribed by said Federal Farm Loan Board thereunder, such loan to be secured by a qualified first mortgage upon said lands and premises.

That thereafter and on said November 5, 1924, said ap-
[fol. 13] plication for a loan was duly submitted to the Loan Committee of said defendant Association, as provided by said Act for such investigation as it, said Loan Committee, might deem necessary as to the character and solvency of the applicant and the sufficiency of the security offered. Thereupon said Loan Committee did make such investigation and thereafter made its written report of the result thereof and did unanimously approve and recommend said loan.

That thereafter and on the 29th day of November 1924 the Board of Directors of said Association, by a favorable vote of two-thirds of the directorate, did, duly approve and recommend to The Federal Land Bank of Louisville a loan not to exceed $7,950.00 to said Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs on the land offered in said application and did by a two-thirds vote of the Directors elect Marshall B. Roberts to membership in said Association, subject to all of the attendant rights, privileges and liabilities incident to membership in said Association, as set forth in the Federal Farm Loan Act and in the by-laws of said Association, particularly Section 4 of Article VIII of said by-laws, which reads as follows:

"Shareholders of this association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of this association to the extent of the amount of the stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

That the individual responsibility of shareholders for debts, contracts and engagements entered into by said Association after July 16, 1933, is limited to the amount paid in and represented by their shares.

That thereafter said application, together with the aforesaid written report of the Loan Committee of said Association and a record of the action taken by its Board of Direc- [fol. 14] tors thereon, was by said Association duly submitted to The Federal Land Bank of Louisville, whereupon said Bank did refer said application and written report of the Loan Committee to an appraiser appointed by the Federal Farm Loan Board, and said appraiser did investigate and make a written report upon the land offered as security for said loan which report was favorable.

That thereupon and on or about the 18th day of May, 1925, said Bank did after due consideration of said application, said written report of the Loan Committee, said action of said Board of Directors thereon, and the aforesaid written report of the appraiser, approve and authorize a loan to Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs in the sum of $5,300.00 to be secured by a qualified first mortgage upon the said lands and premises in said application and report of appraisal described.

That at the time the aforesaid application, and the written report of the Loan Committee and the action of the Board of Directors thereon, was submitted to said Bank, the said Association did subscribe for stock in the said Bank in the amount of $265.00, the same being equal to 5% of the amount of the loan granted; that thereafter, upon the making of said loan, said Association paid for said stock and pledged the same with said Bank as collateral security for said loan in accordance with the requirements of said Act.

That thereafter and on or about the 18th day of May, 1925, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to The Federal Land Bank of Louisville their certain promis-

sory note in writing, wherein and whereby they promised and agreed to pay to said Bank at its office in the city of Louisville and state of Kentucky, the sum of $5,300.00 with interest at the rate of 5½% per annum payable in sixty-[fol. 15] eight semi-annual payments of $172.25 payable on the 1st day of January and July in each year and a final payment of $171.77 payable on the first day of January, 1960.

That at the same time and bearing even date therewith and as a part of the same transaction said Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to said Bank a qualified first mortgage upon the lands and premises described in plaintiff's petition and hereafter described as follows:

Situated in Knox County, and State of Ohio.

First Tract: Being Lot number 24 in the first quarter, fifth township and fifteenth range in the United States Military District, according to a subdivisional survey of said quarter township made by S. W. Farquhar, Esquire, and duly recorded in Book P, pages 574-5-6 of the Records of Deeds of Knox County; said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the county of Knox and state of Ohio and in the first quarter of the fifth township, fifteenth range United States Military Lands situated in Knox County and state aforesaid and being taken off the southwest portion of Lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the southwest corner of said lot, thence west along the south line of said lot twenty-three to the place of beginning, containing 43 acres, be the same more or less.

Third Tract: Lying and being in the county of Knox and state of Ohio, to wit: 30 acres of land out of the southwest corner of Lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15 United States Military lands in Knox county, Ohio, and more particularly described as follows:

Beginning at the southeast corner of lot 23; running north on the line between lots 23 and 22, a distance equal to 2/3rds the length of said line being 97 1/3 poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of lot 23 which said last line is to be run parallel to the said line between Lots 23 and 22.

Said lands lying and being in the county of Knox, state of Ohio and within the territory in which the Bank and said Association were authorized to do business; that said mort-
[fol. 16] gage was thereafter and on the 8th day of June, 1825, at 10:00 o'clock A. M., duly filed for record in the office of the Recorder for Knox County, Ohio, and therein recorded in Column 75, pages 606-607 of the Mortgage Records of said county.

That thereafter, pursuant to the provisions of said Act, the said defendant Association, by its president and secretary-treasurer, endorsed and thereby became liable for the payment of the note and mortgage above mentioned.

That pursuant to the tenth subdivision of Section 12 of said Act (12 U. S. C. 771), said original borrowers, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did elect to use a part of their said loan, towit; $265.00, to pay for their stock in defendant Association, for which they had theretofore subscribed as aforesaid; and that the purchase price of said stock was deducted from the gross amount of said loan, prior to disbursement of the proceeds in the manner described in the following paragraph, said deduction being made in accordance with the direction contained in the loan application, which said direction read as follows:

"To pay for stock in National Farm Loan Association (5 per cent. of ammount applied for) ——."

That thereafter, in May, 1925, said Bank after deducting its proper and authorized fees and charges, did transmit to said Association the net proceeds of said loss, evidenced and secured by the indorsed note and mortgage above mentioned; that said net proceeds were transmitted to said Association pursuant to the authorization of said Act, for delivery to said original borrowers and/or for their account; and that said Association, acting by its secretary-

treasurer, did then pay over said net proceeds, less the proper and authorized fees and charges of said Association, to said original borrowers and/or for their account; [fol. 17] and said original borrowers duly received and receipted for the full proceeds of said loan, less deductions made by said Bank, and said Association for proper and lawful fees and charges in connection with the making of said loan.

That thereafter the said Association did issue to and in the name of one of the original borrowers, Marshall B. Roberts, a certificate for 53 shares of stock of said Association of the par value of $265.00 pursuant to original borrowers' said subscription for said stock and in accordance with the terms and conditions of the Federal Farm Loan Act, and said stock was pledged with said Association as collateral security for said loan, pursuant to the requirements of said Act.

That thereafter and on or about the 24th day of October, 1927, the plaintiff herein purchased from the original borrowers the farm premises described in plaintiff's petition being the same premises which secured the Bank's loan to the original borrowers; that as part of the purchase price, and with the consent of said Bank, plaintiff assumed the mortgage debt and stock interest of said original borrowers and each of them and said 53 shares of stock in the Knox National Farm Loan Association originally issued to Marshall B. Roberts, as aforesaid were transferred to plaintiff who was elected to membership in said association and plaintiff thereby assumed all the liabilities of association membership thereunder, in accordance with the provisions of the Federal Farm Loan Act.

That on or about March 25, 1933, the balance due to the Bank on the mortgage debt which plaintiff assumed and agreed to pay was $2,122.46; that on said date plaintiff paid to defendant Association $1,857.46 and surrendered his certificate of stock representing 53 shares in the defendant Association; that defendant Association by its secretary-treasurer forwarded its check in the amount of $1,857.46 [fol. 18] to defendant Bank; that said defendant Bank returned the check with an explanation it was not sufficient to retire the loan; that again the defendant Association forwarded the check to defendant Bank with the request it be applied toward reduction of the loan; that defendant

Bank so applied said sum, and that there remained an unpaid principal balance of $265.00 of said mortgage debt, which said sum with interest thereon remains unpaid by plaintiff.

That pursuant to the powers vested in it by the terms of said Federal Farm Loan Act, and under and by virtue of the charter granted to it by the Federal Farm Loan Board, The Federal Land Bank of Louisville prior to March 25, 1933, had made numerous other loans to the members of the Knox National Farm Loan Association on the secrity of first mortgages on farm lands qualified under the provisions of said Act in the aggregate amount of $288,600.00, and in connection with their respective loans these member borrowers, including plaintiff, had subscribed for and had been issued stock in said association in the aggregate amount of $14,430.00. In turn the Association had, in connection with said loans, subscribed for and purchased stock in The Federal Land Bank of Louisville in the aggregate amount of $14,430.00. In the case of each loan so made the Association did indorse, and thereby become liable for the payment of each of said loans in accordance with the provisions of the Act in such cases made and provided. That pursuant to the provisions of the Federal Farm Loan Act, the aforesaid mortgages, including that of the plaintiff, were by said Federal Land Bank of Louisville pledged with the Registrar of the Fourth Federal Land Bank District as collateral security for an equal amount of Federal Farm Loan Bonds issued by said Bank and sold to investors; that on the date plaintiff tendered his check in reduction of his mortgage debt [fol. 19] the said Bank had issued and had outstanding in the hands of investors such Federal Farm Loan Bonds in the aggregate principal amount of $113,362,220.00.

From time to time prior to March 25, 1933, there had occurred defaults under the terms and conditions of the aforesaid first mortgages taken by said Bank from the members of said Association and pursuant to the terms and provisions of Section 25 of said Act the Association had been notified of said defaults and had been called upon by said Bank to make good each of said defaults either by the payment of the amounts unpaid thereon in cash or by the substitution of an equal amount of Federal Farm Loan Bonds with all unmatured coupons attached. Notwith-

standing its liability as aforesaid, said Association has failed, and still fails, to make good such defaults.

Under the directions and with the approval of the Federal Farm Loan Board (now Farm Credit Administration), and in order to establish a procedure for carrying out the provisions of the Federal Farm Loan Act as relates to stock liability, the Bank, on October 25, 1929, adopted a classification for national farm loan associations, establishing therefor 4 classes, which classification is set out in full on Exhibit "A" attached hereto and made a part hereof, and class 2 established by said classification is defined as follows:

"Class #2. Every association apparently unable to meet its current obligations without a present impairment of its capital, but seemingly in such condition that it can work out of its present difficulties within a reasonable length of time."

That the classification aforesaid has been followed by said Bank from its adoption to the present time; that by reason of the amount of the unsatisfied matured obligations of said Association to the Bank, the Bank, upon due investigation, did, prior to March 25, 1933, place said association in Class 2, under and by virtue of the procedure adopted as aforesaid with respect to the classification of associations.

[fol. 20] That for the purpose of minimizing losses and establishing a practical procedure in connection with the indebtedness of the Association to the Bank, said defendants entered into an agreement on March 21, 1931, a copy of which agreement is attached hereto, marked Exhibit "B", and made a part hereof; in and by said agreement it was provided in substance that if there shall be a default in the terms of any mortgage indorsed by the Association as a result of which it becomes necesary for the Bank to acquire the mortgages premises, the Association shall remain liable for the debt theretofore secured by such mortgage, and that an account shall be set up to which may be credited any monies including the proceeds of retired stock otherwise payable to the Association as an indemnity against any loss which the Bank may suffer in the final disposition of the property, and that if the sales price of said property as disposed of is less than the Bank's invest-

ment the deficiency is charged to the account of the Association; but that the Association shall not be charged with any sum greater than the actual loss sustained by the Bank, notwithstanding any deficiency judgment which may have been taken upon the foreclosure of such mortgage; that a settlement shall be had between the parties at any time that there are no pending foreclosures of such mortgages, no such acquired lands unsold and no other unpaid material liabilities of the Association to the Bank, or upon the institution of any judicial proceedings which might otherwise prejudice the rights of the Bank as a creditor of the Association, and, in any event, on January 1st, 1935, and on January 1st of each year thereafter, and that such settlement shall constitute an account stated between the parties as to all the items included therein; that at all times since that date the Bank and the Association have proceeded in accordance with the terms and provisions of said [fol. 21] agreement, but no settlement has been had because at all times there have been pending foreclosures, acquired lands unsold and unpaid matured liabilities of the Association to the Bank; and that said agreement conforms in all respects to a standard form theretofore approved by the Federal Farm Loan Board for use throughout the Federal Land Bank system by each Federal Land Bank and the national farm loan associations of its district.

The Association states further that under the provisions of the Federal Farm Loan Act, the construction placed thereon by the Federal Farm Board and the Bank, and the procedure adopted by reason thereof as aforesaid, whenever the Association failed to meet its obligation as indorser on said notes and mortgages, the Bank had a right to and was obliged to offset the amount for which the Association was indebted to said Bank against any amounts otherwise payable to the Association by the Bank, including the proceeds of capital stock taken by the Association in the Bank in connection with said loans and retired by the Bank upon payment thereof.

On March 25, 1933, the total amount of the indebtedness of said Association to said Bank for losses established and charged to the indemnity account, under the procedure above described, was $1,999.89; that in addition thereto, there were at that time estimated losses of the Bank in the aggregate amount of $4,900, on account of lands previously

acquired by the Bank upon the foreclosure of mortgages indorsed by the Association, or on account of pending foreclosure proceedings in connection with other defaulted loans for which the Association was liable as indorser, and said Association was further indebted to said Bank, as indorser of delinquent mortgage loans, for the amount of $2,169.62 in delinquent installments under loans not in process of foreclosure; and at said time the total assets of [fol. 22] said Association immediately available for the payment of its obligations aggregated $1,509.27; that in addition to the assets last mentioned, the Association owned capital stock in the Federal Land Bank of Louisville in the amount of $14,430, which said stock was pledged with said Bank as collateral security for outstanding loans made through said Association.

Defendant Association states further that at all times since March 25, 1933, its indebtedness to said Bank for established losses under indorsed mortgages has exceeded its assets immediately available for liquidation thereof, and that its obligations to said Bank as indorser of delinquent mortgage have continued to exceed the assets immediately available for satisfaction thereof.

Defendant Association states that by reason of its inability as aforesaid to discharge currently its outstanding obligations to its credit the Federal Land Bank of Louisville, it was on March 25, 1933, and at all times since has been, unable to pay off its capital stock at par upon retirement thereof, and that no fund exists or has existed since March 25, 1933, from which distribution may lawfully be made to a stockholder of said Association in payment of his stock interests.

Defendant Association further states that the Federal Farm Loan Act does not authorize a suit against it by one of its shareholders for the proceeds of his capital stock in the Association, unless such shareholder shows, in and by his petition, that said Association has funds available from which such shareholder may properly be paid; and that said Act does not require a national farm loan association to retire and pay off stock unless and until the shareholder shall have paid his loan in full, and unless and until said Association shall have made provision for the satisfaction of its obligations to creditors and to other stockholders who have paid their loans in full.

[fol. 23] Defendant Association further says that no ground has been shown in the Petition filed herein for the appointment of a receiver to take over its assets and administer its affairs; that said Federal Farm Loan Act expressly provides for the liquidation of a national farm loan association, through receivership upon the ground of insolvency, and that the provisions of said Act in such regard confer jurisdiction upon the Farm Credit Administration and its Land Bank Commissioner (formerly Federal Farm Loan Board* for the appointment of a receiver on the ground of insolvency, and that such jurisdiction is exclusive and bars the exercise of like jurisdiction by this or any other court upon the initial application of any party in interest.

Defendant Association further says that the appointment of a court receiver would serve no useful purpose in so far as this plaintiff is concerned, for the reason that the indebtedness of said Association to its creditor, The Federal Land Bank of Louisville, exceeds all assets save and except the capital stock owned by said Association in The Federal Land Bank of Louisville as aforesaid, which said stock is pledged with said Bank, pursuant to the requirements of the Federal Farm Loan Act, as collateral security for outstanding loans; and therefore that a court received would, in administering any assets coming into his possession, have no balance remaining for distribution to plaintiff or to any other shareholder of defendant Association, after paying over said assets to the Association's creditor, The Federal Land Bank of Louisville.

Wherefore, this defendant Association prays, that plaintiff's petition be dismissed, and that this answering defendant may go hence with its costs of this action.

The Knox National Farm Loan Association, Roger D. Branigan, Paul J. Fleming, Charles L. Bermont, Counsel for the Knox National Farm Loan Association.

[fol. 24] *Duly sworn to by V. B. Welker. Jurat omitted in printing.*

[fol. 25] EXHIBIT "A" TO ANSWER

Classification of National Farm Loan Associations in the Fourth Federal Land District

Class #1

Associations wholly solvent without delinquencies or deficiencies.

Class #2

Every association apparently unable to meet its current obligations without a present impairment of its capital, but seemingly in such condition that it can work out of its present difficulties within a reasonable length of time.

Class #3

Every association whose present obligations are so great that not only is its capital partially impaired but it appears that it will not be able to work out of its present difficulties within a reasonable length of time.

Class #4

Every association whose unsatisfied obligations exceed the amount of its capital or whose capital is totally impaired.

[fol. 26] RECITAL AS TO EXHIBIT "B"

Copy of Indemnity Agreement which appears in the Bill of Exceptions as Exhibit F.

[fol. 27] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ANSWER AND CROSS PETITION OF THE FEDERAL LAND BANK OF LOUISVILLE—Filed October 24, 1934

Comes now the defendant, The Federal Land Bank of Louisville, hereinafter referred to as the Bank, and for its

separate answer to the plaintiff's petition alleges and shows to the Court:

That this defendant denies each and every allegation, matter and thing in said petition contained, except as hereinafter specifically admitted, qualified and explained.

That the defendant, The Federal Land Bank of Louisville, is a body corporate organized and existing under and by virtue of the Act of Congress approved July 17, 1916, known and cited as the Federal Farm Loan Act and acts amendatory thereof, chartered, authorized and empowered to do business in the states of Ohio, Indiana, Kentucky and Tennessee, the same constituting and comprising the Fourth Federal Land Bank District, and that said Bank has its principal place of business in the city of Louisville, Kentucky.

That pursuant to the terms of said Federal Farm Loan Act, said Bank is engaged in the business of loaning money to farmers upon the security of qualified first mortgages on farm lands situated in the states of its district; that said loans are made almost entirely through and to members of separate and distinct corporations known as, and referred to in said Act as National Farm Loan Associations, [fol. 28] including defendant association; and that under the provisions of said Act, each such association is required upon obtaining a loan for one of its members to subscribe and pay for stock in said Bank in an amount equal to 5% of such loan and to deposit such stock with such Bank as collateral security for such loan.

That this Defendant admits that said Knox National Farm Loan Association was during all the times mentioned in said petition, and now is, a corporation organized and existing under and by virtue of the aforesaid Act of Congress known and cited as Federal Farm Loan Act, chartered by the Federal Farm Loan Board and authorized by said Board to do business in Knox County, State of Ohio.

That on or about November 5, 1924, Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs being the owners or about to become the owners of the farm premises described in plaintiff's petition, did duly make an application in writing for membership in said Association, and did subscribe to the capital stock of said Association in the amount of $265.00 and at the same time did make application to the defendant Bank for a loan, through said

Association, in the sum of $5,300.00, under the terms, provisions and conditions of the aforesaid Federal Farm Loan Act, and the rules and regulations prescribed by said Federal Farm Loan Board thereunder, such loan to be secured by a qualified first mortgage upon said lands and premises.

That thereafter and on said November 5, 1924, said application for a loan was duly submitted to the Loan Committee of said defendant Association, as provided by said Act for such investigation as it, said Loan Committee, might deem necessary as to the character and solvency of the applicant and the sufficiency of the security offered. Thereupon said Loan Committee did make such investigation and thereafter made its written report of the result thereof [fol. 29] and did unanimously approve and recommend said loan.

That thereafter and on the 29th day of November, 1924, the Board of Directors of said Association, by a favorable vote of two-thirds of the directorate, did duly approve and recommend to The Federal Land Bank of Louisville a loan not to exceed $7,950.00 to said Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs on the land offered in said application and did by a two-thirds vote of the Directors elect Marshall B. Roberts to membership in said Association, subject to all of the attendant rights, privileges and liabilities incident to membership in said Association, as set forth in the Federal Farm Loan Act and in the by-laws of said Association particularly Section 4 of Article VIII of said by-laws, which reads as follows:

"Shareholders of this association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of this association to the extent of the amount of the stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

That the individual responsibility of shareholders for debts, contracts and engagements entered into by said association after July 16, 1933, is limited to the amount paid in and represented by their shares.

That thereafter said application, together with the aforesaid written report of the Loan Committee of said Association and a record of the action taken by its Board of Directors thereon, was by said Association duly submitted

to The Federal Land Bank of Louisville, whereupon said Bank did refer said application and written report of the Loan Committee to an appraiser appointed by the Federal Farm Loan Board, and said appraiser did investigate and make a written report upon the land offered as security for said Loan which report was favorable.

[fol. 30] That thereafter and on or about the 16th day of May, 1925, said Bank did after due consideration of said application, said written report of the Loan Committee, said action of said Board of Directors thereon, and the aforesaid written report of the appraiser, approve and authorize a loan to Marshall B. Roberts, Enid M. Roberts and Constance Roberts Childs in the sum of $5,300.00 to be secured by a qualified first mortgage upon the said lands and premises in said application and report of appraisal described.

That at the time the aforesaid application, and the written report of the Loan Committee and the action of the Board of Directors thereon, was submitted to said Bank, the said Association did subscribe for stock in the said Bank in the amount of $265.00, the same being equal to 5% of the amount of the loan granted; that thereafter, upon the making of said loan, said Association paid for said stock and pledged the same with said Bank as collateral security for said loan in accordance with the requirements of said Act.

That thereafter and on or about the 18th day of May, 1925, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to The Federal Land Bank of Louisville their certain promissory note in writing, wherein and whereby they promised and agreed to pay to said Bank at its office in the city of Louisville and state of Kentucky, the sum of $5,300.00 with interest at the rate of 5½% per annum payable in sixty-eight semiannual payments of $172.25 payable on the 1st day of January and July in each year and a final payment of $171.77 payable on the first day of January, 1960.

That at the same time and bearing even date therewith and as a part of the same transaction said Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did execute and deliver to said defendant [fol. 31] Bank a qualified first mortgage upon the lands and

premises described in plaintiff's petition and hereafter described as follows:

Situated in Knox County and State of Ohio.

First Tract: Being lot number 24 in the first quarter, fifth township, and fifteenth range in the United States Military District, according to a subdivisional survey of said quarter township made by S. W. Farquhar, Esquire, and duly recorded in Book P, pages 574-5-6 of the Records of Deeds of Knox County, said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the county of Knox and state of Ohio and in the first quarter of the fifth township, fifteenth range United States Military Lands, situated in Knox County and the said aforesaid and being taken off the southwest portion of Lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the south-west corner of said lot; thence west along the south line of said lot twenty-three to the place of beginning, containing forty-three acres, be the same more or less.

Third Test: Lying and being in the county of Knox and state of Ohio, towit: 30 acres of land out of the southeast corner of Lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15, United States Military lands in Knox county, Ohio, and more particularly described as follows:

Beginning at the southeast corner of Lot 23; running north on the line between Lots 23 and 22, a distance equal to ⅔rds the length of said line being 97⅓ poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of Lot 23 which said last line is to be run parallel to the said line between Lots 23 and 22.

Said lands lying and being in the county of Knox, state of Ohio, and within the territory in which the defendant Bank and said Association were authorized to do business; the said mortgage was thereafter and on the 8th day of June, 1925, at 10:00 o'clock, A. M., duly filed for record in

the office of the Recorder for Knox County, Ohio, and therein recorded in Volume 75, pages 606-607 of the Mortgage Records of said county.

[fol. 32] That thereafter, pursuant to the provisions of said Act, the said Association, by its president and secretary-treasurer, endorsed and thereby became liable for the payment of the note and mortgage above mentioned.

That pursuant to the tenth subdivision of section 12 of said Act (12 U. S. C. 771), said original borrowers, Marshall B. Roberts, Enid M. Roberts, Constance Roberts Childs and R. F. Childs did elect to use a part of their said loan, towit: $265.00 to pay for their stock in defendant Association, for which they had theretofore subscribed as aforesaid; and that the purchase price of said stock was deducted from the gross amount of said loan, prior to disbursement of the proceeds in the manner described in the following paragraph, said deduction being made in accordance with the direction contained in the loan application, which said direction read as follows:

"To pay for stock in National Farm Loan Association (5 per cent of amount applied for) ——."

That thereafter, in May, 1925, said defendant Bank after deducting its proper and authorized fees and charges, did transmit to said Association the net proceeds of said loan, evidenced and secured by the indorsed note and mortgage above mentioned; that said net proceeds were transmitted to said Association pursuant to the authorization of said Act, for delivery to said original borrowers and/or for their account; and that said Association, acting by its secretary-treasurer, did then pay over said net proceeds, less the proper and authorized fees and charges of said Association, to said original borrowers and/or for their account; and said original borrowers duly received and receipted for the full proceeds of said loan, less deductions made by said Bank, and said Association for proper and lawful fees and charges in connection with the making of said loan.

[fol. 33] That thereafter the said Association did issue to and in the name of one of the original borrowers, Marshall B. Roberts, a certificate for 53 shares of stock of said Association of the par value of $265.00 pursuant to original borrowers' said subscription for said stock and in accord-

ance with the terms and conditions of the Federal Farm Loan Act, and said stock was pledged with said Association as coll-teral security for said loan, pursuant to the requirements of said Act.

That thereafter and on or about the 24th day of October, 1927, the plaintiff herein purchased from the original borrowers the farm premises described in plaintiff's petition being the same premises which secured the defendant Bank's loan to the original borrowers; that as part of the purchase price and with the consent of said Bank, plaintiff assumed the mortgage debt and stock interest of said original borrowers and each of them and said 53 shares of stock in the Knox National Farm Loan Association originally issued to Marshall B. Roberts, as aforesaid were transferred to plaintiff who was elected to membership in said association and plaintiff thereby assumed all the liabilities of association membership thereunder, in accordance with the provisions of the Federal Farm Loan Act.

That on or about March 25, 1933, the balance due to the defendant Bank on the mortgage debt which plaintiff assumed and agreed to pay was $2,122.46; that on said date plaintiff paid to said Association $1,857.46 and surrendered his certificate of stock representing 53 shares in the said Assoc-ation; that said Association by its secretary-treasurer forwarded its check in the amount of $1,857.46 to defendant Bank; that said defendant Bank returned the check with an explanation it was not sufficient to retire the loan; that against the defendant Association forwarded the check to defendant Bank with the request it [fol. 34] be applied toward reduction of the loan; that defendant Bank so applied said sum and there remained an unpaid principal balance of $265.00 of said mortgage debt, which said sum with interest thereon remains unpaid by plaintiff.

That pursuant to the powers vested in it by the terms of said Federal Farm Loan Act, and under and by virtue of the charter granted to it by the Federal Farm Loan Board, the Federal Land Bank of Louisville prior to March 25, 1933, had made numerous other loans to the members of the Knox National Farm Loan Association on the security of first mortgages on farm lands qualified under the provisions of said Act in the aggregate amount of $288,600.00, and in connection with their respective loans these mem-

ber borrowers, including plaintiff, had subscribed for and had been issued stock in said Association in the aggregate amount of $14,430.00. In turn the Association had, in connection with said loans, subscribed for and purchased stock in the defendant Bank in the aggregate amount of $14,430.00. In the case of each loan so made the said Association did indorse, and thereby become liable for the payment of each of said loans in accordance with the provisions of the Act in such cases made and provided. That pursuant to the provisions of the Federal Farm Loan Act, the aforesaid mortgages, including that of the plaintiff, were by said defendant Bank pledged with the Registrar of the Fourth Federal Land Bank District as collateral security for an equal amount of Federal Farm Loan Bonds issued by said Bank and sold to investors; that on the date plaintiff tendered his check in reduction of his mortgage debt the defendant Bank had issued and had outstanding in the hands of investors such Federal Farm Loan Bonds in the aggregate principal amount of $113,362,220.00.

From time to time prior to March 25, 1933, there had occurred defaults under the terms and conditions of the [fol. 35] aforesaid first mortgages taken by said defendant Bank from the members of said Association and pursuant to the terms and provisions of Section 25 of said Act the Association had been notified of said defaults and had been called upon by defendant Bank to make good each of said defaults either by the payment of the amount unpaid thereon in cash or by the substitution of an equal amount of Federal Farm Loan Bonds with all unmatured coupons attached. Notwithstanding its liability as aforesaid, said Association has failed and still fails, to make good such defaults.

Under the directions and with the approval of the Federal Farm Loan Board (now Farm Credit Administration), and in order to establish a procedure for carrying out the provisions of the Federal Farm Loan Act as relates to stock liability, the defendant Bank, on October 25, 1929, adopted a classification for national farm loan associations, establishing therefor 4 classes, which classification is set out in full on Exhibit "A" attached hereto and made a part hereof, and class 2 established by said classification is defined as follows:

"Class #2. Every association apparently unable to meet its current obligations without a present impairment

of its capital, but seemingly in such condition that it can work out of its present difficulties within a reasonable length of time."

That the classification aforesaid has been followed by defendant Bank from its adoption to the present time; that by reason of the amount of the unsatisfied matured obligations of said Association to the defendant Bank, the Bank, upon due investigation, did, prior to March 25, 1933, place said Association in class 2, under and by virtue of the procedure adopted as aforesaid with respect to the classification of associations.

That for the purpose of minimizing losses and establishing a practical procedure in connection with the indebted- [fol. 36] ness of the Association to the defendant Bank, said defendants entered into an agreement on March 21, 1931, a copy of which agreement is attached hereto, marked Exhibit "B" and made a part hereof; in and by said agreement it was provided in substance that if there shall be a default in the terms of any mortgage indorsed by the Association as a result of which it becomes necessary for the defendant Bank to acquire the mortgaged premises, the Association shall remain liable for the debt theretofore secured by such mortgage, and that an account shall be set up to which may be credited any monies including the proceeds of retired stock otherwise payable to the Association as an indemnity against any loss which the defendant Bank may suffer in the final disposition of the property, and that if the sales price of said property as disposed of is less than the defendant Bank's investment the deficiency is charged to the account of the Association; but that the Association shall not be charged with any sum greater than the actual loss sustained by the defendant Bank, notwithstanding any deficiency judgment which may have been taken upon the foreclosure of such mortgage; that a settlement shall be had between the parties at any time that there are no pending foreclosures of such mortgages, no such acquired land unsold and no other unpaid material liabilities of the Association to the defendant Bank, or upon the institution of any judicial proceedings which might otherwise prejudice the rights of the defendant Bank as a creditor of the Association, and, in any event, on January 1st, 1935, and on January 1st of each year thereafter,

and that such settlement shall constitute an account stated between the parties as to all the items included therein; that at all times since that date the defendant Bank and the Association have proceeded in accordance with the terms and provisions of said agreement, but no settlement has been had because at all times there have been pending fore- [fol. 37] closures, acquired lands and unpaid matured liabilities of the Association to the defendant Bank; and that said agreement conforms in all respects to a standard form theretofore approved by the Federal Farm Loan Board for use throughout the Federal Land Bank system by each Federal Land Bank and the national farm loan associations of its district.

The defendant Bank states further that under the provisions of the Federal Farm Loan Act, the construction placed thereon by the Federal Farm Board and the Bank, and the procedure adopted by reason thereof as aforesaid, whenever the Association failed to meet its obligation as indorser on said notes and mortgages, the defendant Bank had a right to and was obliged to offset the amount for which the Association was indebted to said defendant Bank against any amounts otherwise payable to the Association by the Bank, including the proceeds of capital stock taken by the Association in the Bank, in connection with said loans and retired by the defendant Bank upon payment thereof.

On March 25, 1933, the total amount of the indebtedness of said Association to said defendant Bank for losses established and charged to the indemnity account, under the procedure above described, was $1,999.89; that in addition thereto, there were at that time estimated losses of the defendant Bank in the aggregate amount of $4,900 on account of lands previously acquired by the Bank upon the foreclosure of mortgages indorsed by the Association, or on account of pending foreclosure proceedings in connection with other defaulted loans for which the Association was liable as indorser, and said Association was further indebted to said defendant Bank, as indorser of delinquent mortgage loans, for the amount of $2,169.62 in delinquent installments under loans not in process of foreclosure; and at said time, the total assets of said Association immedi- [fol. 38] ately available for the payment of its obligations aggregated $1,509.27; that in addition to the assets last

mentioned, the Association owned capital stock in the Federal Land Bank of Louisville in the amount of $14,430, which said stock was pledged with said defendant Bank as collateral security for outstanding loans made through said association.

Defendant Bank states further that at all times since March 25, 1933, said Association's indebtedness to said defendant Bank for established losses under indorsed mortgages has exceeded said Association's assets immediately available for liquidation thereof, and that said Association's obligations to said defendant Bank as indorser of delinquent mortgages have continued to exceed the assets immediately available for satisfaction thereof.

Defendant Bank states that by reason of said Association's inability as aforesaid to discharge currently said Association's outstanding obligations to its creditor, defendant Bank, it was on March 25, 1933, and at all times since has been unable to pay off said Association's capital stock at par upon retirement thereof, and that no fund exists or has existed since March 25, 1933, from which distribution may lawfully be made to a stockholder of said Association in payment of his stock interests.

Defendant Bank further states that the Federal Farm Loan Act does not authorize a suit against said Association by one of said Association's shareholders for the proceeds of his capital stock in said Association, unless such shareholder shows, in and by his petition, that said Association has funds available from which such shareholder may properly be paid; and that said Act does not require a national farm loan association to retire and pay off stock unless and until the shareholder shall have paid his loan in full, and unless and until said Association shall have made [fol. 39] provisions for the satisfaction of its obligations to creditors and to other stockholders who have paid their loans in full.

Defendant Bank further says that no ground has been shown in the petition filed herein for the appointment of a receiver to take over said Association's assets and administer its affairs; that said Federal Farm Loan Act expressly provides for the liquidation of a national farm loan association, through receivership upon the ground of insolvency, and that the provisions of said Act in such regard confer jurisdiction upon the Farm Credit Administration

and its Land Bank Commissioner (formerly Federal Farm Loan Board) for the appointment of a receiver on the ground of insolvency, and that such jurisdiction is exclusive and bars the exercise of like jurisdiction by this or any other court upon the initial application of any party in interest.

Defendant Bank further says that the appoint- of a court receiver would serve no useful purpose insofar as this plaintiff is concerned, for the reason that the indebtedness of said Association to its creditor, The Federal Land Bank of Louisville, exceeds all assets save and except the capital stock owned by said Association in The Federal Land Bank of Louisville as aforesaid, which said stock is pledged with said defendant Bank, pursuant to the requirements of The Federal Farm Loan Act, as collateral security for outstanding loans, and therefore that a court receiver would, in administering any assets coming into his possession, have no balance remaining for distribution to plaintiff or to any other shareholder of said Association, after paying over said assets to said Association's creditor, The Federal Land Bank of Louisville.

Cross-Petition

The defendant Bank is and at all times hereinafter [fol. 40] mentioned was, a corporation organized and e-*sit*-ing under that Act of Congress known as the Federal Farm Loan Act, with power to contract and be contracted with, to sue and be sued and to lend money on first mortgages.

First Cause of Action

On or about May 18, 1926, Marshall B. Roberts, unmarried, Enid M. Roberts, unmarried, Constant J. Roberts Childs and R. F. Childs, her husband, hereinafter collectively called the Borrowers), for value received, signed, executed and delivered to the defendant Bank a certain writing called a promissory note dated May 18, 1925, which was and is in words and figures as follows:

No. 32174. $5300.

First Mortgage Note

Centerburg, Ohio, May 18th, 1925.

For value received we promise to pay to the order of The Federal Land Bank of Louisville at its offices in the city of Louisville, Kentucky, the principal sum of

* * * Fifty-Three Hundred * * * Dollars

with interest from date on the whole amount of said principal sum remaining from time to time unpaid, at the rate of five and one-half per centum per annum, payments to be made on the amortization plan and in accordance with amortization tables promulgated by The Federal Farm Loan Board, said payments to be made in manner and form as follows: A preliminary interest payment to be made on the first day of July, 1925, being 5½ per cent interest from date of this note until said time of payment and thereafter in sixty-eight semi-annual payments of * * * One Hundred Seventy-Two and 25/100 * Dollars each, payable on the first day of January and July in each year, and a final payment of * One Hundred Seventy-One and 77/100 * * * Dollars payable on the first day of January, 1960, and we further promise and agree to pay reasonable attorny's fees in the event there is any default in the payment of this note as provided herein.

This instrument is negotiable and payable at The Federal Land Bank of Louisville at its offices in the city of Louisville, Kentucky.

If any payment, or payments, herein provided for, are not paid when due, such defaulted payment, or payments, shall bear simple interest from the date of such default until paid at the highest rate of interest authorized by law, not exceeding eight per centum per annum.

The drawers and endorsers, and all parties to this instrument, severally waive presentment for payment, protest, notice of protest, notice of non-payment of the instrument, demand and all legal diligence in enforcing collection.

This note is secured by a mortgage of even date herewith, executed by. * * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband * * * to the said [fol. 41] The Federal Land Bank of Louisville, Kentucky, on lands in Knox County, Ohio, which is the first lien on the property therein described. If any default be made in any of the payments provided for in this note, or in case of failure to perform any or either of the terms or conditions of said —, the whole indebtedness secured by this —, together with all interest on same shall, at the option of said The Federal Land Bank of Louisville, its successors, or assigns become due and payable at once without demand

or notice, notice of the exercise of such option being hereby expressly waived.

After five years from the date hereof, on any date when any regular installment becomes due hereunder, the maker or makers of this note shall have the option of making additional payments in the sum authorized by The Federal Farm Loan Act or any amendment thereof, for the reduction of the principal or the payment of the entire principal, and any payment in reduction of principal so made shall be endorsed on this note. Such additional payments shall not reduce the fixed semi-annual payments, provided for herein, but will pay off the loan at an earlier date. Whenever the whole prin-ipal hereof, together with all interest accrued thereon, shall have been fully paid then all provisions herein for installment payments maturing thereafter shall be null and void and this note shall then be fully paid off and satisfied.

Marshall B. Roberts, Enid M. Roberts, Constant J. Roberts-Childs, R. F. Childs.

[fol. 42] By said note the Borrowers, and each of them, agreed and promised to pay to the Bank the principal sum of $5,300.00 with interest at the rate of 5½% per annum upon the amount of the principal sum remaining unpaid from time to time, and to pay the principal sum on the amortization plan, said payments to be made as follows:

A preliminary interest payment of $25.91 on June 9, 1925, and thereafter sixty-eight semi-annual payments of $171.25 each, payable on January 1st, and July 1st, of each year thereafter, beginning with January 1, 1926, and extending to and including July 1, 1959, and a final payment of $171.77 on January 1, 1960.

The Bank is the owner and holder of said note, and at all times herein mentioned was the owner thereof.

The installments due on said note were paid to and including the installment due on January 1, 1933, and a partial payment of $65.84 on April 21, 1933, and on the July 1, 1933, installment.

The installments due on July 1, 1933 and January 1, 1934 have not been paid, nor has any part thereof or any interest thereon been paid, except as hereinabove stated.

The Bank has elected and declared, and hereby elects to and declares, its whole debt evidenced by said note to be immediately due and payable and in default.

There is now due and owing to the Bank from the Borrowers, and each of them, on account of the loan and note heretofore set forth the following sums:

$106.41 Balance of installment due July 1, 1933.
170.93 Installment due January 1, 1934.

with interest on each of the foregoing sums at the rate of 5½ per centum (5½%) per annum from the aforesaid respective due date thereof until paid.

(Here follows one photo, side folio 43)

[fol. 44] Second Cause of Action

The allegations herein before made are made a part hereof by reference as fully as if copied herein.

To more fully secure the payment of the note heretofore set forth, the Borrower on or about May 18, 1925, signed, executed, acknowledged and delivered to the Bank a certain writing called a mortgage which was and is in words and figures as follows, towit:

Ohio

This Mortgage made and entered into, this the 18th day of May, 1925, by and between * * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband * * * of Knox County, Ohio, parties of the first part, and The Federal Land Bank of Louisville, a corporation duly incorporated and existing under the Federal Farm Loan Act, the principal office and post office address of which is Louisville, Kentucky, party of the second part,

Witnesseth: That the said parties of the first part in consideration of Fifty-Three Hundred Dollars to them in hand paid and loaned by the party of the second part, the receipt of which is hereby acknowledged, do by these presents convey and mortgage unto the said party of the second part, its successors and assigns, the following described real estate, with its rents, issues and profits, situated in Knox County and State of Ohio, more particularly described as follows:

First Tract: Being lot number 24 in the first quarter, fifth township, and fifteenth range in the United States

32174

Principal $5,300, Rate 5½% Semi-Annual Installments $172.25

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	Date paid	Balance
1925	1	145.75	26.50	2 7 W	5273.50
1926	2	145.02	27.23	6 3 W	5246.27
1926	3	144.27	27.98	12 7 B	5218.29
1927	4	143.50	28.75	6 3 T	5189.54
1927	5	142.71	29.54	10 22 L	5160.00
1928	6	141.90	30.35	6 22 L	5129.65
1928	7	141.07	31.18	12 27 W	5098.47
1929	8	140.21	32.04	6 28 W	5066.43
1930	9	139.33	32.92	12 27 29	5033.51
1930	10	138.42	33.83	6 19 30L	4999.68
1930	11	137.49	34.76		4964.92
19	12	136.54	35.71		4929.21
19	13	135.55	36.70		4892.51
19	14	134.54	37.71		4854.80
19	15	133.51	38.74		4816.06
19	16	132.44	39.81		4776.25
19	17	131.35	40.90		4735.35
19	18	130.22	42.03		4693.32
19	19	129.07	43.18		4650.14
19	20	127.88	44.37		4606.77
19	21	126.66	45.59		4560.18
19	22	125.40	46.85		4513.33
19	23	124.12	48.13		4465.20
19	24	122.79	49.46		4415.74
19	25	121.43	50.82		4364.92
19	26	120.04	52.21		4312.71
19	27	118.60	53.65		4259.06
19	28	117.12	55.13		4203.93
1930	29	115.61	56.64	6-19-30L	4147.29
1931	30	114.05	58.20	12-27-30L	4089.09
1931	31	112.45	59.80	6-23-31L	4029.29
19	32	~~110.31~~	61.44		3967.85
19	33	~~109.19~~	63.13		3904.72
19	34	~~107.38~~	64.87		3839.85
19	35	~~105.60~~	66.65		3773.20
19	36	~~103.76~~	68.49		3704.71
19	37	~~101.88~~	70.37		3634.34
19	38	~~99.94~~	72.31		3562.03
19	39	~~97.96~~	74.29		3487.74
19	40	~~95.91~~	76.34		3411.40
19	41	~~93.81~~	78.44		3332.96

AMORTIZATION TABLE

Year Due	No.	Interest	Principal	date paid	Initial	Balance
19	42	~~91.66~~	80.59			3252.37
1931	43	~~89.44~~	82.81	6-23-31	L	3169.56
1932	44	87.16	85.09	12-29-31	L	3084.47
1932	45	~~84.82~~	87.43	12-29-31	L	2997.04
19	46	82.42	89.83			2907.21
19	47	79.95	92.30			2814.91
19	48	77.41	94.84			2720.07
19	49	74.80	97.45			2622.62
19	50	72.12	100.13			2522.49
19	51	69.37	102.88			2419.61
1932	52	66.54	105.71	4-18-31	H	2313.90
1932	53	63.63	108.62	6-29-32	L	2205.28
1933	54	60.65	111.60	12-21-32	L	2093.68
19	55	~~57.68~~	114.67			1979.01
19	56	~~54.42~~	117.83			1861.18
19	57	~~51.18~~	121.07			1740.11
19	58	~~47.85~~	124.40			1615.71
19	59	~~44.43~~	127.82			1487.89
19	60	~~40.92~~	131.33			1356.56
19	61	37.31	134.94			1221.62
19	62	33.59	138.66			1082.96
19	63	29.78	142.47			940.49
19	64	~~25.86~~	146.39			794.10
19	65	21.84	150.41			643.69
19	66	17.70	154.55			439.14
1933	67	~~13.45~~	158.80	4-21-33	S	330.34
19	68	9.08	163.17			167.17
19	69	4.60	167.17			
19	70					
19	71					
19	72					

6	141.90	30.35	6	22	L	5129.65	19	47	79.95	92.30		2720.07
7	141.07	31.18	12	27	W	5098.47	19	48	77.41	94.84		2622.62
8	140.21	32.04	6	28	W	5066.43	19	49	74.80	97.45		2522.49
9	139.33	32.92	12	27	29	5033.51	19	50	72.12	100.13		2419.61
10	138.42	33.83	6	19	30L	4999.68	19	51	69.37	102.88		2313.90
11	137.49	34.76				4964.92	1932	52	66.54	105.71	4-18-31	H 2205.28
12	136.54	35.71				4929.21	1932	53	63.63	108.62	6-29-32	L 2093.68
13	135.55	36.70				4892.51	1933	54	60.65	111.60	12-21-32	L 1979.01
14	134.54	37.71				4854.80	19	55	~~57.58~~	114.67		1861.18
15	133.51	38.74				4816.06	19	56	~~54.42~~	117.83		1740.11
16	132.44	39.81				4776.25	19	57	~~51.18~~	121.07		1615.71
17	131.35	40.90				4735.35	19	58	~~47.85~~	124.40		1487.89
18	130.22	42.03				4693.32	19	59	~~44.43~~	127.82		1356.56
19	129.07	43.18				4650.14	19	60	~~40.92~~	131.33		1221.62
20	127.88	44.37				4606.77	19	61	37.31	134.94		1082.96
21	126.66	45.59				4560.18	19	62	~~33.59~~	138.66		940.49
22	125.40	46.85				4513.33	19	63	29.78	142.47		794.10
23	124.12	48.13				4465.20	19	64	~~25.86~~	146.39		643.69
24	122.79	49.46				4415.74	19	65	21.84	150.41		439.14
25	121.43	50.82				4364.92	19	66	17.70	154.55		330.34
26	120.04	52.21				4312.71	1933	67	~~13.45~~	158.80	4-21-33	S 167.17
27	118.60	53.65				4259.06	19	68	9.08	163.17		
28	117.12	55.13				4203.93	19	69	4.60	167.17		
29	115.61	56.64	6-19-30L			4147.29	19	70				
30	114.05	58.20	12-27-30L			4089.09	19	71				
31	112.45	59.80	6-23-31L			4029.29	19	72				
32	~~110.81~~	61.44				3967.85						
33	~~109.12~~	63.13				3904.72						
34	~~107.38~~	64.87				3839.85						
35	~~105.60~~	66.65				3773.20						
36	~~103.76~~	68.49				3704.71						
37	~~101.88~~	70.37				3634.34						
38	~~99.94~~	72.31				3562.03						
39	~~97.96~~	74.29				3487.74						
40	~~95.91~~	76.34				3411.40						
41	~~93.81~~	78.44				3332.96						

(Interest payments ruled out are not paid)

..... , 19....

For value received we hereby guarantee the payment of the within note, according to the terms thereof, both as to principal and as to interest.

Knox National Farm Loan Association.
.....

By L. R. Kempton Sec.-Treas.
.....

Military District, according to a subdivisional survey of said quarter township made by S. W. Farquhar, esquire, and duly recorded in book P, pages 574-5-6 of the Records of Deeds of Knox County; said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the County of Knox and State of Ohio, and in the first quarter of the fifth town- [fol. 45] ship, fifteenth range United States Military Lands situated in Knox County and the state aforesaid and being taken off the southwest portion of lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the southwest corner of said lot; thence west along the south line of said lot twenty-three to the place of beginning containing forty-three acres be the same more or less.

Third Tract: Lying and being in the County of Knox and State of Ohio, towit: 30 acres of land out of the southeast corner of lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15, United States Military lands in Knox county, Ohio, and more particularly described as follows:

Beginning at the southeast corner of lot #23; running north on the line between lots 23 and 22, a distance equal to ⅔ the length of said line being 97⅓ poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of lot 23 which said last line is to be run parallel to the said line between lots 23 and 22.

MC.

To Have and to Hold the same to the only proper use of the said part, its successors and assigns forever.

This Mortgage is given to secure said loan made by the party of the second part to the parties of the first part as is evidenced by a first mortgage note duly executed and delivered by * * * Marshall B. Roberts: Enid M. Roberts: Constant J. Roberts Childs and R. F. Childs * * * to the party of the second part, and payable to its order;

said note being in said principal sum of * * * Fifty-Three Hundred * * * Dollars, and bearing interest on same at the rate of five and one-half per centum per annum, payments to be made on the amortization plan in accordance with the terms and conditions of said first mortgage note, which is made a part of this mortgage as fully as if wholly written herein.

The Parties of the First Part hereby expressly warrant the title to said real estate and further expressly covenant that they have a good right to sell, convey and mortgage the same; that same is free from all encumbrances, prior to, or on an equality with this mortgage, that they have a good and perfect title to the same against all persons whomsoever and that this mortgage is and shall be the first and best lien against said premises.

The Parties of the First Part further covenant and agree with the party of the second part:

First. That they will pay when due all taxes, liens, judgments or assessments which may be lawfully assessed [fol. 46] against the property hereby mortgaged and all charges of every character against the same, and any such taxes, liens, judgments, assessments or charges, not paid when due, may be paid by the mortgagee and when so paid shall become immediately due to the party of the second part, shall become a part of the mortgage debt and shall bear simple interest at the rate of eight per centum per annum until paid. The parties of the first part further agree, immediately upon the payment of same, to furnish to the party of the second part receipts of the proper officers, or parties, for all such payments, and it is agreed that all irregularities and defects in the levy or assessment and the right to insist that the personal property be first exhausted in the payment of such taxes and assessments are hereby expressly waived, and the receipt of the proper officers shall be conclusive evidence as to the amount and validity of such payments. The parties of the first part will, during the term of this mortgage, duly assess said real estate for taxation at the time prescribed by law.

Second. That the whole and every portion of said loan shall be expended only for the purposes specified in the original application, which application is hereby made a part of this mortgage the same as if fully copied herein,

provided that a part of said loan may be used to pay for stock in the Farm Loan Association required to be subscribed and paid for in order to secure this loan, and except further, that the party of the second pary may permit said loan to be used for any other purpose authorized by the Federal Farm Loan Act, said permission to be given in writing only.

Third. That said loan is to be repair on an amortization plan by means of a fixed number of annual, or semi-annual, installments sufficient to cover the charges and amounts to be applied on the principal, as provided in and required by, The Federal Farm Loan Act as if fully provided for in said first mortgage note.

Fourth. To take good care of said real estate and not to commit waste, or allow the same to be committed on said premises, but will cause the same to be worked and cultivated in a proper and farmerlike manner at all times and will not cut or remove any timber or improvements from said land, except such as may be needed for ordinary farming purposes and shall ke-pt said lands in as good condition for farming purposes as they are now in and will keep the houses, fences and other improvements on said land in good condition and repair at all times.

Fifth. To pay all expenses incurred by the party of the second part in securing abstracts of title and for attorney's fees in protecting the security of this mortgage, the said part- of the first part will pay, in addition to the taxable costs, an adequate and reasonable sum as a solicitor's or attorney's fee, the amount thereof to be fixed by the court and included in the judgment or decree.

Sixth. Upon commencement of a suit in foreclosure of this mortgage or at any time during the pendency thereof, the court in which such suit is pending, upon application of the party of the second part, its successors or assigns, may at once and without notice to the parties of the first part, or any person claiming under appoint a receiver for said premises to take possession thereof, to collect the rents, issues and profits of said premises, and out of the same to make necessary repairs and keep said premises in proper condition and repair, and to pay all taxes and assessments accruing during said receivership, and all taxes

and assessments unpaid and tax sales remaining unredeemed at or prior to the foreclosure sale, and to pay insurance premiums necessary to keep said premises insured in accordance with the provisions of this mortgage and the [fol. 47] expense of the receivership.

Seventh. To keep the buildings upon said premises insured against loss or damage by fire in some good, reliable insurance company or companies, to be approved by the party of the second part, its successors or assigns to the amount of not less than * * * Twenty-Five Hundred Dollars, with loss, if any, payable to said party of the second part, its successors or assigns, as its, or their, interest may appear at time of loss, and forthwith upon issue shall deposit said policy with said party of the second part, its successors or assigns. In case the parties of the first part shall fail to comply with the conditions of this mortgage concerning said insurance, then the party of the second part shall have the right to take out said insurance, pay the premiums on same, and any insurance premium paid by the party of the second part to protect its security hereunder shall become a part of this mortgage and shall bear interest at the rate of eight per centum per annum from date of said — until paid.

This Mortgage, and the note secured thereby are executed and delivered under and in accordance with the said Federal Farm Loan Act, and are subject to all the terms, conditions and provisions thereof, which Act is made a part hereof the same as if set out in full herein.

The Condition of this Mortgage is, that if the parties of the first part shall well and truly make all the payments called for in said first mortgage note in accordance with its terms and tenor and shall perform each and every one of the covenants, conditions and agreements, either in said note or this mortgage contained, then the same shall be null and void, but if the parties of the first part shall, in any wise, be in default in respect to any of such payments or in respect to the performance of any of the conditions, covenants or agreements in said note or this mortgage contained, the whole indebtedness provided for herein or in said note, together with all interest on same, all of which is hereby secured by this mortgage, shall, at the option of the said The Federal Land Bank of Louisville, its successors or assigns become due and payable forthwith without de-

mand or notice, notice of exercise of such option being hereby expressly waived, and same may be immediately collected by suit to enforce the same, or otherwise, and it is agreed that the party of the second part shall thereupon be entitled to enter into the possession of said mortgaged premises, and to collect the rents, issues and profits thereof, and apply the same on the debt hereby secured. The omission of said mortgagee to exercise any option upon any default as aforesaid, shall not preclude it from the exercise thereof upon any subsequent default.

When the Note Secured by this Mortgage shall have been fully paid off in accordance with its terms and tenor, then this mortgage shall be duly released by the party of the second part, but all legal fees pertaining to such release shall be paid by the parties of the first part.

In Witness Whereof, the said * * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband, who hereby releases all his right and expectancy of Dower in the said premises, have hereunto set their hands this 18th day of May, in the year of our Lord one thousand nine hundred and twenty-five.

[fol. 48] Signed and acknowledged in presence of Guy C. Bishop. C. H. Bishop.

Marshall B. Roberts, Enid M. Roberts, Constant J. Roberts-Childs, R. F. Childs.

STATE OF OHIO,
County of Knox, ss:

Be it Remembered, That on this 23rd day of May, in the year of our Lord one thousand nine hundred and twenty-five, before me, the subscriber, a Notary Public in and for said county, personally came * * Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs and R. F. Childs, her husband * * * the grantors in the foregoing Mortgage, and acknowledge the signing thereof to be their voluntary act and deed.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.

Guy C. Bishop, Notary Public, Knox County, Ohio.

Release of Mortgage

Louisville, Ky., —— —, 19—.

The debt secured by the within mortgage having been paid in full, this mortgage is cancelled and released, and the Recorder of —— County, Ohio, is authorized to enter satisfaction thereof of record.

The Federal Land Bank of Louisville, by —— ——,
Its President.

Attest: —— ——, Its Secretary.

LS.

[Endorsed:] 4676. Knox N. F. L. A. R. C. I. No. 32174. Marshall B. Roberts, unmarried; Enid M. Roberts, unmarried; Constant J. Roberts Childs, her husband to [fol. 49] The Federal Land Bank of Louisville. Mortgage. Dated the 17th day of May, 1925. State of Ohio, County of Knox. Received for record on the — day of —— 19—, at — o'clock — M., and recorded in Volume — of Mortgages, on pages —. Filed ——, —— Recorder. At 10 o'clock A. M., June 6, 1925. Recorded June 8, 1925. Record Mtg. Vol. 75 Page- 606 & 607. L. L. Fletcher, Recorder. $2.60. The recorder will please return recorded mortgage promptly to the Federal Land Bank of Louisville, Ky. 6-19.

[fol. 50] Said mortgage was duly filed for record with the Recorder of Deeds of Knox County, Ohio, on June 8, 1925, at 10:00 o'clock, A. M., and was by him recorded in Volume 75 at page 606 of the Mortgage Records of said County. Said mortgage constitutes a first and best lien on the mortgaged property.

The installments due on said note were paid to and including the installment due on January 1, 1933 and a partial payment of $65.84 on April 21, 1932, on the July 1, 1933 installment.

The installments due on July 1, 1933 and June 1, 1934, have not been paid nor has any part thereof or any interest thereon been paid, except as hereinabove stated.

The Bank has elected and declared, and hereby elects to and declares, its whole debt secured by said mortgage to

be immediately due and payable and in default, and the terms of the said mortgage to have become absolute.

Third Cause of Action

The allegations hereinbefore made are made a part hereof by reference as fully as if copied herein.

On or about October 10, 1927 the plaintiff, Arthur C. Phillips and Mary F. Phillips executed and delivered to the defendant Bank their instrument, dated October 10, 1927, in writing which was and is in words and figures as follows:

[fol. 51] Form 110.
5-23-2500.
B. C. & F.

Loan No. 32174

One Loan on This Security

(1)

To the Federal Land Bank of Louisville, Louisville, Kentucky:

This is to Certify that I (or we) for the sum of $15,000.00 Dollars, have purchased the entire tract of land which was mortgaged to you by Marshall B. Roberts to secure a loan from you in the sum of Fifty-three Hundred ($5300) Dollars, and I (or we) have assumed the payment of said indebtedness and have purchased the original shares of stock held by the vendor in the Knox National Farm Loan Association, and have assumed all the liabilities of membership thereunder.

Dated at —— the 10 day of October, 1927.

Signature of Purchaser: A. C. Phillips; Permanent Address: Centerburg, Ohio.

Signature of Purchaser: Mary F. Phillips; Permanent address: Centerburg Ohio.

Witness: Edith L. Horn.

I (or we) certify that the above statements are true, and I (or we) hereby confirm the sale and authorize the Secre-

tary-Treasurer to legally transfer the original shares of stock to the purchaser or purchasers set out above.

Signature of Seller: M. B. Roberts, Constant Roberts-Childs.

Signature of Seller: Enid M. Roberts.

Witness: Edith L. Horn.

This is to Certify that A. C. Phillips having purchased the entire farm of Marshall B. Roberts, on which there is a Mortgage or Trust Deed to the Federal Land Bank of Louisville in the sum of Fifty-three Hundred Dollars, and the stock interest thereof, the said A. C. Phillips has been [fol. 52] elected to membership in the Knox County National Farm Loan Association.

Dated at Mt. Vernon, the 24 day of Oct. 1927.

Jno. Cunningham, President.

Attest: E. B. Tucker, Secretary-Treasurer.

Important: Read Carefully and Fill in All Above Spaces.

Loan cannot be transferred unless entire farm covered by loan is sold to party seeking to assume loan.

Purchase price requested in above form means the entire consideration. The stock interest of the vendor must be transferred to the purchaser. $5.00 transfer fee must accompany this form when same is returned to the Federal Land Bank.

Do Not Write in this Spaee. It is for Use of Federal Land Bank Only.

State Ohio County Knox App. Stokesbury Land 9300 Imp. 5000

Date Rec'd Fee Paid 10-26-27 Entered By Ledger Sheet Index Index Register Plate Card Record.

[fol. 53] Wherefore, The Federal Land Bank of Louisville prays:

(1) That the defendants and each of them named in this petition be required to make answer hereto or be forever barred.

(2) That the Court find due the plaintiff the following sums:

$106.41 due July 1, 1933,
170.93 due January 1, 1934

with interest on each of said sums at the rate of 5½ per centum (5½%) per annum from the aforesaid respective due date thereof until paid.

(3) That the Court render judgment for it against A. C. Phillips and Mary F. Phillips and each of them, in the sums so found due, with interest thereon as aforesaid.

(4) That to secure it in the payment of the foregoing sums, and each of them, The Federal Land Bank of Louisville be adjudged to have a lien on the mortgaged property herein described prior and superior to all other interests in and/or claims against said mortgaged property.

(5) That the lien of The Federal Land Bank of Louisville be enforced, and the mortgaged property to be sold to satisfy the lien of the Federal Land Bank of Louisville, and the proceeds thereof by applied to the payment of its indebtedness and the satisfaction of its lien.

For its costs herein expended and all other proper relief.

Roger D. Branigin, Paul J. Fleming, Counsel for The Federal Land Bank of Louisville.

[fol. 54] *Duly sworn to by Frank D. Rash. Jurat omitted in printing.*

[fol. 55] Exhibit "A" to answer omitted. Printed side fol. 25, ante.

[fol. 56] RECITAL AS TO EXHIBIT "B"

Attached to the answer is copy of Indemnity Agreement which appears in the Bill of Exceptions as Exhibit F.

[fol. 57] In Court of Common Pleas of Knox County

[Title omitted]

Answer of Plaintiff to Cross-Petition of Defendant The Federal Land Bank of Louisville—Filed March 28, 1935

Now comes the plaintiff, and by leave of the Court, files this his Answer to the Cross Petition of the Defendant, The Federal Land Bank of Louisville, and says:

He admits the corporate existence of said defendant, as alleged in said Cross Petition.

He admits the execution and delivery of the note and mortgage mentioned and described in the first, second and third causes of action of said Cross Petition.

He admits the execution and delivery of the instrument mentioned and described in said third cause of action as set forth therein.

But said defendant says that he denies all allegations of said Cross Petition not herein specifically admitted to be true, and especially denies that there is due to said Cross Petitioner upon said note and mortgage and upon his contract assuming same hereinabove mentioned, the sum and/or sums alleged in said Cross Petition, to said Cross Petitioner, or to any other person; and further denies that there is any sum whatsoever due upon the said note and the said mortgage mentioned and deschibed in said Cross Petition, from this plaintiff, or from any one else, to said Cross Petitioner, by reason of the facts alleged in plaintiff's Petition heretofore filed.

[fol. 58] Wherefore, plaintiff having fully answered said Cross Petition, prays that it may be dismissed at Cross Petitioner's costs.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.

[fol. 59] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

REPLY OF PLAINTIFF TO ANSWER OF DEFENDANT THE KNOX NATIONAL FARM LOAN ASSOTIATION—Filed March 28, 1935

Now comes the plaintiff, and by leave of the Court, files this his separate Reply to the Answer of the defendant, The Knox National Farm Loan Association, and says:

That he admits the allegations of said Answer relative to the corporate organization and existence of each of the two defendants to this action; That he admits the allegations of said Answer relative to the loan granted and made by the defendant The Federal Land Bank of Louisville, as mentioned in said Answer, and the execution and delivery of the note and mortgage evidencing and securing said loan as mentioned and set forth in said Answer; and further admits the purchase by plaintiff from the original borrowers, above mentioned, of the same premises described in plaintiff's Petition, and that they are the same premises which secured said Bank's loan to the original borrowers, and are the same premises mentioned and described in said Answer of the defendant The Knox National Farm Loan Association; and further admits the assumption of the said mortgage debt of said original borrowers, and the acquiring of the stock interest of said original borrowers by this plaintiff, as set forth in said Answer.

Further replying, said plaintiff says that he admits the allegations of said Answer in respect to the amount of the indebtness of plaintiff to said Bank on said mortgage debt on March 25, 1933, and the fact that on said date plaintiff paid thereon the sum of $1857.46 and surrendered his Cer-
[fol. 60] tificate of Stock for fifty-three (53) shares in the defendant Association; and further admits that on said last mentioned date, and at all times since said date, the said defendants Association's indebedtness to said defendant Bank for established losses under mortgages endorsed and guaranteed by said Association in favor of said Bank, has exceeded said Association's assets; and further admits that said Association's obligations to said defendant, The Federal Land Bank of Louisville, as endorser and guarantor of said mortgages and debts which have become delinquent, and continued, and do now continue, to exceed the

assets of said Association out of which payment of same can be made.

As to all other allegations of said Answer, which are of an affirmative nature and are not corroborative of the allegations of said Petition, plaintiff says, concerning some he has no knowledge, and others are untrue, and he therefore denies each and all of same and demands proof thereof.

Wherefore, Plaintiff again prays as set forth in his Petition heretofore filed herein.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

[fol. 61] *Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.*

[fol. 62] In Court of Common Pleas of Knox County

[Title omitted]

Reply of Plaintiff to Answer of Defendant The Federal Land Bank of Louisville—Filed March 28, 1935

Now comes the plaintiff, and by leave of the Court, files this his Separate Reply to the Answer of the defendant The Federal Land Bank of Louisville, and says:

That he admits the allegations of said Answer relative to the corporate organization and existance of said defendant; that he admits the allegations of said Answer relative to the loan granted by said defendant as mentioned in said Answer, and the execution and delivery of the note and mortgage evidencing and securing said loan as mentioned and set forth in said Answer; and further admits the assumption of the mortgage debt and the acquiring of the stock interest of the original borrowers by this plaintiff, as set forth in said Answer.

Further replying, said plaintiff says that he admits the allegations of said Answer in respect to the amount of the indebtedness of the defendant The Knox National Farm Loan Association to said defendant The Federal Land Bank of Louisville on March 25, 1933, as alleged and set forth in said Answer; and further admits that on said date, and at all times since said date, the said defendant

Association's indebtedness to said defendants Bank for established losses under mortgages endorsed and guaranteed by said Association in favor of said Bank has exceeded said Association's assets; and further admits that said Association's obligations to said defendant, The Federal Land Bank of Louisville as endorser of said mortgages [fol. 63] which have become delinquent, have continued, and do now continue, to exceed the assets of said Association out of which payments of same can be made.

As to all other allegations of said Answer, which are of an affirmative nature and are not corroborative of the allegations of the Petition, plaintiff says concerning some he has no knowledge and others are untrue, and he therefore denies same and demands proof thereof.

Plaintiff further says that he especially denies that there is any provision of either Federal or State law that prevents or excuses the defendant, The Knox National Farm Loan Association from the payment and retirement of the stock held by said plaintiff, as alleged in his Petition until said Association shall have made provisions for the satisfaction of its obligations to cretitors and to the other stock holders who have paid their loans in full.

Plaintiff further especially denies that the Federal Farm Loan Act mentioned in said Answer confers jurisdiction that is exclusive for the appointment of a Receiver on the ground of insolvency, and in reference to the defendant The Knox National Farm Loan Association, upon the Farm Credit Administration and its Land Bank Commissioner.

Wherefore plaintiff again prays as set forth in his Petition heretofore filed herein.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

[fols. 64 & 65] *Duly sworn to by Arthur C. Phillips. Jurat omitted in printing.*

[fol. 66] In Court of Common Pleas of Knox County

Arthur C. Phillips, Plaintiff,

vs.

The Knox National Farm Loan Association and The Federal Land Bank of Louisville, Defendants

Bill of Exceptions

Appearances:

Mr. H. C. Devin, for plaintiff.

Messrs. Armand L. Koethen, Paul J. Fleming and C. L. Bermont, for defendants.

Be it Remembered That at the hearing of this case at the April, 1935, term of said court, towit, on the 29th day of April, 1935, before Hon. Philip L. Wilkins, Judge of said court, the following tender was made on behalf of plaintiff:

Tender of Payment

Mr. Devin: On behalf of the plaintiff we tender the full payment of this mortgage loan, the amount that was due thereon March 25, 1935, $265.00, on condition that the original note and mortgage be canceled and surrendered, and on condition further that the defendant, the Knox National Farm Loan Association cancel and pay off to him the 53 shares of stock held by him in The Knox National Farm Loan Association.

Mr. Fleming: The offer and tender are refused.

Statement of Counsel

And thereupon, counsel for plaintiff, Mr. Devin, proceeded to state to the court the claim of plaintiff, as follows:

Mr. Devin: This is an action brought by the plaintiff Arthur C. Phillips, and in order that the court may understand this case as to what it is about, I will endeavor to [fol. 67] shorten the statement as much as possible, and will read at least a portion of the petition.

The Court: I have read it, Mr. Devin.

Mr. Devin: Very good then. I will not take the time. The petition endeavors to set forth the cause of action which this plaintiff claims against these defendants, which

means it summarizes briefly that he assumed and agreed to pay the balance due upon a loan when he bought the property from a certain man by the name of Roberts, and others, and in that connection he took over from the owners of the farm in question 53 shares of stock of The Knox National Farm Loan Association, and thereupon a new certificate was issued directly to this plaintiff for the 53 shares and the Knox National Farm Loan Association took these shares as collateral security for the balance still remaining due upon the loan, and issued to him a receipt for the collateral, at which time it was agreed between the plaintiff and The Knox National Farm Loan Association that upon the payment of the loan that The Knox National Farm Loan Association would redeem and pay off the 53 shares of stock at the par value of five dollars per share, being $265.00. The Knox National Farm Loan Association issued a receipt for that collateral, and that receipt was signed by the secretary and treasurer of the organization, Mr. E. B. Tucker, and contains language as follows, referring to the stock, "it will be accepted at face value on final payment of the loan." Now in March, 1933, this plaintiff went to the office of The Knox National Farm Loan Association, and saw the secretary-treasurer, Mr. Tucker, and advised him that he wished to pay off the loan in full and secure a cancellation and release of the mortgage in question, and they made some careful calculation of the amount remaining due upon the loan, and I am not sure whether that was confirmed by correspondence with The Federal Loan Bank or not, but at any rate they agreed that if the $265 was allowed [fol. 68] as a part of the payment that there would be a balance still remaining due in cash upon the loan of $2122.50, and that was a liberal figuring, because if there were any odd cents involved I guess he paid a little more than the actual amount of the figuring. Now that amount was paid into the hands of the secretary-treasurer, Mr. Tucker, and in due course Mr. Phillips was informed that the Federal Land Bank declined to release and return the note and mortgage in question, but indicated they would apply whatever moneys were remitted to apply upon the loan, and so as a matter of fact the amount was forwarded to The Federal Land Bank and applied upon the loan, and that left a balance of about $265 remaining unpaid, which the plaintiff in this case was demanding should be paid out of the re-

demption of his stock in The Knox National Farm Loan's hands. Now since that time the Federal Land Bank of Louisville has continuously declined to cancel and release the note and mortgage in question, and The Knox National Farm Loan Association has failed and declined to redeem the 53 shares of stock at par value thereof, in accordance with the Federal, Statute, and in accordance with its specific agreement to which I have referred. Now consequently this plaintiff brings this action, alleging the facts I have covered here, and prays that his title be quieted, and that the lien upon the farm in question be canceled, and that The Knox National Farm Loan Association be obliged to redeem this stock, or if it should declare itself to be insolvent, and the court so finds, that in view of its insolvency that it be placed in the hands of a receiver, according to statute, and liquidated and wound up. Consequently this action, as I view it, is based upon a petition here which is fundamentally an action to quiet title, and upon the ground that these two concerns, the two defendants here, are engaged in the business of loaning money, the one through the other, [fol. 69] and that they were both engaged in this enterprise; that this plaintiff has offered to pay in full the entire debt, if and when he receives $265 allowance, in accordance with the agreement which he has received from The Knox National Farm Loan Association.

STATEMENT OF COUNSEL

Mr. Fleming: If the court please, the statement of facts, as presented by Mr. Devin, are substantially correct. I would just like to point out to the court that at the time Mr. Phillips assumed the note and mortgage he received a receipt from The Knox National Farm Loan Association which evidenced a certificate for 53 shares of stock of The Knox National Farm Loan Association, and this receipt at the bottom had typed on there that it would be accepted on the final payment of the loan, but the note and mortgage were held by The Federal Land Bank of Louisville. Now The Knox National Farm Loan Association and The Federal Lank Bank, while they are incorporated under the same Act of Congress—the Federal Farm Loan Act—yet they are separate and distinct corporations. One is not controlled by the other, and they have no common officers, and the business operations of the one are not conducted by the

other, so that when Mr. Phillips tendered the $2122.50, in 1933, to pay off his loan, it fell short by $265 of paying it off in full. The $265 is represented by stock held by Mr. Phillips of The Knox Farm Association, therefore the Bank is not obliged to accept stock held by him in that Association as payment of his debt to the Bank.

(Court called from room, and returns.)

The Court: Now you may proceed, Mr. Fleming.

Mr. Fleming: And also, under the law, Mr. Phillips, before he could be a borrower from The Federal Land Bank, must become a stockholders in The Knox National Farm Loan Association. In other words, this is a co-operative thing, and in order to borrow from the Association he must [fol. 70] purchase stock in the Association equal to five per-cent of the gross amount of the loan, and that is the stock which Mr. Phillips holds.

The Court: Is there any place along the line that the Farm Loan Association becomes obligor to The Federal Land Bank?

Mr. Fleming: I am just coming to that.

The Court: Very well.

Mr. Fleming: In March, 1931, The Knox National Farm Loan Association entered into an agreement with The Federal Land Bank—a copy of the agreement is attached to the pleadings, and it is called the "Indemnity Agreement." The purpose of the agreement was to minimize losses in their affairs as they were able to, in the actual operation of their business. An Indemnity Agreement provided, in part, that in foreclosure—I mean in losses following through a foreclosure action when the Bank is compelled to take in a farm—any loss caused by the re-sale will be charged against the Association, and the reason the Association is chargeable is because they are an endorser on the mortgage note— the original note. And during the period from 1931 up to the present time there has been—there have been losses incurred by reason of the necessity of the Bank bidding in farms which were foreclosed upon, and which The Knox National Farm Association was liable for upon the mortgage notes.

The Court: Did the Loan Company sign that application contemporaneously with the mortgage loan—the original borrowers?

Mr. Fleming: That is right. Yes. This was signed at the same time the original borrowers borrowed the money.

The Court: Now it is your position that there was that provision or arrangement between Phillips and The Federal Land Bank obligated him to redeem this stock?

[fol. 71] Mr. Fleming: That is right. He is a stockholder of the Loan Association but not of the Federal Land Bank.

COLLOQUY

The Court: Any reply to that statement, Mr. Devin?

Mr. Devin: My answer to the statement is this; that these are both corporations existing under Federal law, and incorporated under the provisions of what is known as the Federal Farm Loan Act, and by the provisions of Section 721, upon the payment of the borrower's loan—I think possibly it has not been brought out to the court and maybe I better make this statement again——

The Court: Before proceeding to make that more definite, that is 721?

Mr. Devin: It is 721 of what is known as the Federal Farm Loan Act.

Mr. Fleming: That is like the United States Code, it is part of Title 12. Section 721.

Mr. Devin: Just before reading what I have in mind I want to call the court's attention—I don't think it has been brought out, but probably the court understands it. Under the procedure of a loan such as this, when the borrower purchases the required amount of stock The Knox National Farm Loan Association is required by law to use that money to purchase the exact equivalent amount of stock in a Federal Farm Loan Bank, and consequently The Knox National Farm Loan Association, at that very time, became the owner of the exact and same amount of stock of The Federal Farm Loan Bank, which it put up as collateral security in connection with this loan. I believe that is not disputed?

Mr. Fleming: Yes, that is the fact.

Mr. Devin: Now, consequently, disregarding for the moment the fact that Phillips acquired his stock from the [fol. 72] original borrower—that wouldn't make any difference, but simplyfying it as though he was making his loan originally, directly he is required to purchase a certain amount of stock of The Farm Loan Association, and at that

very time The Knox National Farm Loan Association buys, with the same money, the exact amount of stock in The Federal Farm Loan Bank of Louisville. Now the provisions of the section I have indicated (consulting book), going down to—"Such capital stock shall be held by said Land Bank as collateral security for the payment of said loan, but said Association shall be paid any dividends accruing and payable on said capital stock while it is outstanding." That is referring to the stock of the Knox National Farm Loan Association when it is purchased from The Federal Land Bank. "Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Board, be paid off at par and retired from full payment of the mortgage loan. In such case The National Farm Loan Association shall pay off at par and retire the corresponding shares of its stock which were issued when said Land Bank stock was issued." You will observe that it is required by this section that I have just read that upon the payment of the loan in full that The Knox National Farm Loan Association shall pay off and retire that stock, and at the same time and for the same reason that the Federal Land Bank——

The Court: Were to do likewise.

Mr. Devin: Were to do likewise with respect to the stock that has been taken by The Knox National Farm Loan Association. Now I am still aware of the fact that counsel will claim that the provisions of this statute are disregarded by the decision of the North Dakota (Byrne) case. However, I shall expect to be able to point out to this court substantial reasons why the decision in the North Dakota case shall not be applied to this case, and that the facts of the two cases [fol. 73] are considerably different. Now from the statement made by counsel on behalf—as I understand counsel represents both of these defendants—I am not quite clear and I was not clear when I read the pleadings, whether it is now claimed that the defendant The Knox National Farm Loan Association is solvent or insolvent, and it seems to me that this is a proposition that might save us some considerable amount of investigation upon the part of this court if it was a matter that could be either admitted or denied. The allegation of the answer is that it cannot meet its current obligations; or something of the kind—I have forgotten the exact language—but it did not seem to me to

be a clear proposition as to whether it was an admission that the concern was insolvent or not.

The Court: Do you claim it is insolvent in your petition?

Mr. Devin: Yes.

The Court: Do counsel have any explanation to make for the benefit of counsel on that matter?

Mr. Fleming: Well, if Mr. Devin—a part of his case is based upon the fact that the Association is insolvent.

The Court: Your position is one of denial, then?

Mr. Fleming: Of denial, yes.

Mr. Devin: They do not admit it?

Mr. Fleming: No, we do not.

The Court: Now, gentlemen, can one of you indicate or dictate into the record what is in controversy in this case? —some agreed statement?

Mr. Koethen: We have tried to do that, but we are not able to get together.

The Court: In the main can you get together on certain portions to be taken by the court, under testimony?

[fol. 74] Mr. Devin: I call attention to the fact that the state of the pleadings, in my judgment—I am unable to find that under the state of the pleadings there is what is considered to be, as essential features of the case, very much for controversy.

The Court: I sensed that from what I have heard this morning, but if there is any material point you want we will listen to it.

Mr. Devin: The answers in this case are perfectly appalling in their size, and I consider that ninety percent. of the two answers are totally irrelevant and immaterial to the issues in this case. I didn't wish to delay proceedings to file a motion to strike out, but it seems to me we go into a mass of matter concerning which there is no controversy whatsoever, and a lot of it has nothing to do with this lawsuit.

The Court: Suppose you counsel confer and see to what extent you might agree upon the facts in this case, which will expedite the matters if you can agree to some extent.

(Provate conference, and parties return into court.)

Mr. Devin: Your Honor, with reference to our getting together on an agreed statement, it is my opinion that the only agreed statement that we can freely get together on is

what the pleadings disclose in the matter of the allegations and admissions.

The Court: Well, you may carry it through to that extent, then, if you care to.

Mr. Devin: Now I have tried to keep the matter at issue in this case down to what I consider to be the essentials for the determination of this lawsuit. Of course I have nothing to say about the cross-petitioner here. Whenever the cross-petition comes in it is for this gentleman to say what he wishes to allege, and what we may be able to deny. But this petition alleges that these defendants are both corporations organized and existing under the laws of the United [fol. 75] States, and under the provisions of the Federal Farm Loan Act. That is apparently admitted. And the principal office of The Knox National Farm Loan Association in the city of Mt. Vernon, and the principal office of the Federal Farm Bank in the city of Louisville, Kentucky. Now the plaintiff alleges that he is the owner of certain lands situated in Knox county—and I believe that is not disputed—and that he acquired them from Constance Roberts Childs and others on October 24, 1927, and by the terms of his purchase assumed and agreed to pay a certain mortgage upon the lands in question to the Federal Land Bank of Louisville,—all of which is not disputed, but is alleged in the petition; that the mortgage is recorded to secure the note, and at the time of its purchase there was a balance of $5160, which he assumed and agreed to pay. Now he further alleges that at the time these original parties executed and delivered the mortgage in question they were required to purchase 53 shares of the capital stock of the defendant The Knox National Farm Loan Association and deposit the same with said Association as collateral security for the payment of their loan, and at the same time, pursuant to the provisions of the law, that The Knox National Farm Loan Association purchased an equal amount of the stock of The Federal Land Bank of Louisville. "Plaintiff further says that upon his purchase of the real estate hereinabove mentioned, consisting of a farm, and the assumption of the mortgage aforesaid, that said 53 shares of the capital stock of said The Knox National Farm Loan Association of the par value of five dollars per share were purchased by and transferred to him for the sum of $265; that the said The Knox National Farm Loan Association, in

consideration of his assumption of said mortgage debt and acceptance of the transfer of said stock, and the deposit of the same with said The Knox National Farm Loan Association as collateral security for the payment of the loan afore-
[fol. 76] said, agreed that said plaintiff should be entitled to all of the rights and privileges theretofore agreed upon and given to the said original grantors in said deed to this plaintiff in respect to said 53 shares of said capital stock of the defendant The Knox National Farm Loan Association, and that said rights included an agreement on the part of said The Knox National Farm Loan Association that said stock would be accepted at its face value on final payment of said loan." Now it is further alleged that The Knox National Farm Loan Association issued its receipt to this plaintiff (Mr. Phillips) at that time, which contains the provision that it will be accepted at the face value on the final payment of the loan. Now it is alleged that from the time of its purchase until March 25th, 1933, that he made such payments to the defendant, and that on the last mentioned date the entire balance of the principal amounted to less than $2122.50, and that he paid that amount into the hands of The Knox National Farm Loan Association, being the sum of $1857.50, and surrendered at face value of $265 his 53 shares of the stock, and so forth. Now of course he claims that he has fully paid and satisfied the loan, and as I understand it that is denied. But up to this time I don't know any of these allegations that are denied.

The Court: Now let us stop there and make inquiry. Do you, Mr. Fleming, know of any denial up to that date of signing the notes he refers to?

Mr. Fleming: Yes, our answer practically admits all that.

Mr. Devin: Consequently we are down to the issue as to whether or not the payment of the sum of money alleged and the offer of the surrender of the stock should have paid the loan in full, and entitle Mr. Phillips to the cancellation of his mortgage, and now that is at issue. Now it is further alleged that "The Knox National Farm Loan As-
[fol. 77] sociation has made such losses in the operation of its business that its capital stock is impaired, and that it is continuing operation at the risk of further losses and further impairment, and that holders of such stock may become subject to assessment thereon for the purpose of paying liabilities heretofore created and now being created.

by said defendant. Plaintiff says that if said defendant The Knox National Farm Loan Association is permitted to continue its said operations that it may result in further losses and further impairment of said capital stock, and may result in an assessment upon stockholders to meet said loss and said impairment up to a possible amount equal to the par value of said stock." Now as I said before, I am not quite able to understand from the working on the subject in the answer as to whether or not it is admitted that the defendant The Knox National Farm Loan Association is insolvent or whether it is claimed it is solvent? (to opposing counsel). Now it might clear the matter up to have a clear statement from the defendant as to what is claimed on that proposition, as to whether this defendant The Knox National Farm Loan Association is solvent or insolvent.

The Court: Well, the court understands that heretofore counsel said he was denying the allegation?

Mr. Fleming: Well, we are inclined to admit at this time that the Association is insolvent. Incidentally, we have a statement prepared showing the condition of the Association, if Mr. Devin will agree to accept it, and that would save a lot of time.

The Court: Yes, it would.

Mr. Devin: How is that?

Mr. Koethen: That is in support of the statement as to the condition of the Association as of today.

Mr. Devin: Well, if you say it is insolvent that is about [fol. 78] all I would know about it if I looked at is, probably (laughing). Perhaps it would be well to let me look at it and it may not be necessary to put it even in evidence, in view of what counsel have just stated.

(Mr. Devin examines statement referred to.)

Mr. Devin: I think I can save the record by having this go in as it is. (Ex. B).

The Court: It will do no harm to put it in; it will probably shorten the case.

Mr. Devin: There is one point that I consider of importance from my standpoint, and that is I expect to point out to the court by your own attorney that additional insolvency is possible to be rolling up here all the time.

The Court: Yes.

Mr. Devin: And that the contingencies are not yet established.

Mr. Fleming: Yes, but the Association may work out.

Mr. Devin: Yes, that is a possibility. Do you mean the claims you hold for part of it?

Mr. Fleming: The Association may be in a position to refund that stock within the next month or——

The Court: Now, gentlemen, do you think it requires any testimony in addition to the stipulation and meeting of the issues made by the petition and the answer? Doesn't it simply become a question of law upon what has been stipulated?

Mr. Devin: Well, I consider it so.

The Court: Well, if that is so can't counsel agree?

Mr. Devin: I have this for the sake of the record. I would like to offer this in evidence, and have counsel waive the necessity of identifying it and so forth. I consider it to be the groundwork of this entire action.

[fol. 79] The Court: Probably there is no difference of opinion about that.

Mr. Devin: That is a receipt of The Knox National Farm Loan Association for Certificate No. 93, for 53 shares of the capital stock of said Association, issued to plaintiff, dated October 24, 1927.

(Said certificate receipt marked Exhibit A, hereto attached and made a part of this Bill of Exceptions.)

The Court: Take up now the question on the cross-petition, this issue having been made.

Mr. Fleming: We would like to have Mr. Devin admit the issuance of this indemnity certificate.

Mr. Devin: There will be no objection to it.

The Court: That is quite rulable here.

Mr. Fleming: There is a photostatic copy attached to our answer.

Mr. Devin: I think maybe I better just finish whatever I had in the matter of the proof of statement.

The Court: Maybe I was misled. If you haven't, then conclude it.

Mr. Devin: No, I think in addition to the receipt which I have presented—perhaps this will be admitted too?—that the amount tendered in payment, and paid by Mr. Phillips on March 25th, 1933, would be sufficient to pay his loan in

full if the 53 shares of stock were redeemed at par at that tim, at $265. Is that a fact?

Mr. Fleming: Yes.

Mr. Devin: Now as a further question of the evidence to be presented by this plaintiff: that The Knox National Farm Loan Association has been ever since this date in March, 1933, a continuing—continuing the business of making mortgage loans in this county, and when I examined the record last Saturday, I think, more than $100,000 is shown by its audit to have been added to its loans up to last August—August of 1934, which would be sufficient for [fol. 80] my purpose—that this Knox National Farm Loan Association has increased its loaning in Knox county by more than $100,000 since the payment of this loan was effected, and that in connection with all those loans it assumes a contingent liability by its endorsement on the repayment of the loan.

The Court: Are you in position to admit anything about it?

Mr. Koethen: No, we can't admit it is engaged in the business of making loans at all. It is the Federal Land Bank that makes the loans in the character of——

Mr. Devin: All right, I will put it another way: That The Knox National Farm Loan Association agree to indemnify the Federal Land Bank in risk of losses to the amount and extent that I have mentioned since that day?

Mr. Koethen: Let us use the words—(all talking at once!)—that The Knox National Farm Loan Association has endorsed and become liable for the payment of loans in the amount of more than $100,000, since September, 1933, and August, 1934; do you want that date?

Mr. Devin: The date I had here was the date he tendered the payment, on March 25th, 1933.

The Court: And you want to offer that summary of the financial statement for whatever purpose you want it in?

Mr. Devin: Well, I understand that now is—I now offer the statement (Exhibit B) that by stipulation is agreed to be a true statement from the books of the defendant The Knox National Farm Loan Association of its financial condition, as of April 23rd, 1935, marked Exhibit B. And for the benefit of the court in explanation that it is stipulated and agreed that the net deficit shown thereon of $997.60 does not reflect any loss or any gain that may be had as to

the future disposition of the three farms listed on page two of Exhibit B, which have been heretofore purchased at [fol. 81] sheriff's sale by The Federal Land Bank of Louisville, and are part of the loans guaranteed to the Federal Land Bank of Louisville by The Knox National Farm Loan Association. I think that is all that is necessary to state about it.

The Court: It is admitted.

(Exhibit B offered in evidence and admitted and the same hereto attached and made a part of this bill of exceptions.)

The Court: Does that conclude your case?

Mr. Devin: Yes, we rest.

Defense

Mr. Koethen: We are perfectly willing to admit——

The Court: When counsel presents his case in argument we can survey this matter and comment upon it. Now is there anything in support of the cross-petition?

Mr. Fleming: We would still like for Mr. Devin — finish about this agreement. He didn't dispose of it.

Mr. Devin: Yes, I got off on something else. As far as I am concerned the indemnity agreement is not disputed. I guess I will make no objection.

Said indemnity agreement, marked Exhibit F herein attached and made a part of this bill of exceptions.

Mr. Fleming: You might note that a copy of the indemnity agreement is attached to the answers of the defendants.

The Court: And will suffice for the purpose.

Mr. Fleming: And also at this time we would like to have Mr. Devin admit this certificate of stock held by The Knox National Farm Loan Association in The Federal Land Bank. I think you received a copy of it, Mr. Devin?

Mr. Devin: That is the original?

[fol. 82] Mr. Fleming: Yes.

Mr. Devin: All right.

Mr. Fleming: And it is agreeable to you to substitute a photostatic copy?

Mr. Devin: Yes.

Mr. Fleming: And certificate marked Exhibit C, certificate of stock representing 53 shares of stock, and offered in evidence.

(Said certificate of stock marked Exhibit C, hereto attached and made a part of this bill of exceptions.)

Mr. Fleming: And also I would like to introduce as an exhibit the original application made in connection with this loan, marked Exhibit D. (showing same to Mr. Devin).

Mr. Devin: I don't object to that on the ground that it is irrelevant, but that it is simply tending to encumber the record, since there is no issue on the subject at all but that the original parties made application for such loan and received it. It is rather a lengthy document and I can't see any reason for it.

The Court: What do you claim for it, Mr. Fleming?

Mr. Fleming: The application discloses the original amount of the loan, including sufficient money to pay for the stock of The Knox National Farm Loan Association, and it is agreed that it should be included in the face of the note and paid——

The Court: I note your petition sets that out, now what did you have in your answer—the cross-petition sets out the fact just related by Mr. Fleming.

Mr. Devin: I don't know; I would have to take a look at my petition.

The Court: Where is that? Some place in the petition I got it.

Mr. Koethen: It is in our answer.

[fol. 83] Mr. Devin: Which answer is it in, both of them?

Mr. Fleming: Yes.

The Court: Well, if counsel claims it is a material item of defense from his standpoint the court will have to pass upon it.

Mr. Devin: I am unable to see why the introduction of it is essential to the determination of this lawsuit. This party made application in a very long and elaborate form to secure this loan, and we admit that they did.

The Court: Is it possible that the assignee would be bound by any of the averments made in the original application of the borrower?

Mr. Fleming: In reference to the payment on the stock it is the only evidence we have to show that the money was so included on the face of the note.

The Court: And you claim that would be binding upon the assignee?

Mr. Devin: What difference does it make?

The Court: We will admit it now under reservation, and if we find there was no application it would be disregarded.

Mr. Devin: That is all right. My objection is particularly on the ground of the encumbering of the record, and it is irrelevant and immaterial.

Mr. Fleming: It will be agreeable to substitute photostatic copies?

Mr. Devin: Oh, yes.

(Said application marked Exhibit D, and same hereto attached and made a part of this bill of exceptions.)

Mr. Fleming: I think that disposes of everything we have except the cross-petition, in which we are asking for a foreclosure.

The Court: All right.

Mr. Fleming: Counsel has admitted that he assumed— [fol. 84] I think the only dispute about the note and mortgage is the amount due?

The Court: Yes, it resolves itself again to a question of law.

Mr. Fleming: We have the assistant treasurer of the Bank here that we could put on the stand and prove it.

The Court: Perhaps Mr. Devin would admit it.

Mr. Devin: The answer admits practically everything in the cross-petition, except the claim that there is anything due. Now I was just looking at your answer. He admits the corporate existence of the defendant and the execution and delivery of the note and mortgage mentioned, and admits the execution and delivery of the instrument mentioned and described in said third cause of action, and I don't know exactly what that is——

The Court: I assume you mean the figures?

Mr. Fleming: Yes, he made a tender of $265 and we refused it.

The Court: I think I will take some testimony on that. You may proceed on that.

[fol. 85] And thereupon the defendants, to maintain the issues on their part, called C. B. WUNDERLICH as a witness, who testified as follows:

Examined by Mr. Koethen:

Q. Your name?
A. C. B. Wunderlich (spelling name).
Q. You are employed by the Federal Land Bank?
A. Yes, sir.
Q. And what is your capacity in the bank, Mr. Wunderlich?
A. Assistant treasurer.
Q. In that capacity what are your duties—we will put it that way?
A. I have direct supervision over the records of the bank, and as such I am familiar with the contents of the records.
Q. You are familiar with the records in connection with this loan made to Mr. Roberts and others, and assumed by Mr. Phillips?
A. Yes, sir.
Q. Will you tell the court how much is due upon that loan at the present time?
A. At the present time there is due on this loan $327.92.
Q. How did you arrive at those figures?
A. The figures are arrived at in this manner; the regular installment which was due July 1, 1933, remains unpaid, and amounts to $172.25. The subsequent installment to that which was due January 1, 1934, amounts to $170.93. On February 6, 1935, an advancement was made by the Land Bank to cover insurance amounting to $27.75. There is delinquency or penalty interest rather on all delinquencies from the date it became delinquent until today, amounting to $23.83. Those items make a total of $393.76. Now against it there is applied a partial payment of $65.84, which was made April 21, 1933, leaving a net balance due today of $327.92.
Q. Mr. Devin, in your reply you have admitted the execution and delivery of this note and mortgage?
[fol. 86] Mr. Devin: Yes.
Q. It is your witness.

And on cross-examination by Mr. Devin as follows:

Q. Mr. Wunderlich, explain what you mean by penalty interest?

A. Regular interest is included in the regular installment to the date it becomes due. These two unpaid installments carry a penalty interest from the date it becomes due until today.

Q. Am I correct in stating then that the penalty interest refers to interest on unpaid interest?

A. Yes.

Q. And to that extent therefore it would be compound interest?

A. The installment—on the amortization form of payment is made up of principal and interest, and is one amount representing an installment, and if an installment is not paid when due it accrues penalty interest from the time it is due until it is paid.

Q. Then the penalty interest is interest on the total amount of the installment, which includes part principal and part interest?

A. Yes, sir.

Q. Now, Mr. Wunderlich, what was this a credit upon that of April 1933, of sixty some dollars? What was the date and amount again, please?

A. April 21, 1933, and the amount is $65.84.

Q. Have you any personal knowledge as to who paid that amount?

A. I have not; no, sir.

Q. You know nothing about this transaction except what you read upon the book; is that true?

A. What the records actually show; yes, sir.

Q. Now you don't know who paid this sixty some dollars?

A. No, sir.

Q. And as to the actual date of its payment, all you know is that it appears upon the book as of that date?

[fol. 87] A. That it was applied against this loan on April 21, 1933.

Q. On April 21, 1933, it was applied against this loan?

A. Yes, sir.

Q. Now, Mr. Wunderlich, does your record show a payment upon that loan, March 25, 1933, of $1857.50? Is that

correct? It is so blurred I can't make it out. $1859. Does your record show that payment, Mr. Wunderlich?

A. Yes, sir.

Q. What is the amount and date according to your record?

A. April 21, 1933.

Q. April 21st?

A. Yes.

Q. 1933?

A. Yes.

The Court: What is the amount, please?

A. This is the note record which as the amortization shows it an individual installment that was paid by *that* payment.

Q. The court has asked you a question; have you answered?

The Court: I was inquiring about the items. I wanted the exact amount as of April 21st.

A. I haven't got the exact amount here.

The Court: I see.

Q. Well, then, how do you know it was on April 21st, Mr. Wunderlich?

A. Because that was the date upon which this endorsement was made.

Q. What endorsement?

A. The payment.

Q. The payment of what?

A. The installment.

Q. No, I have asked you, and I will ask you again; what does your record show relative to the payment by this debtor of $1857.50, upon that obligation, upon March 25, 1933?

A. There is no payment applied on that date.

Q. Now are you testifying now from your recollection or from the books, or from that paper you hold in your hand?

A. I am testifying from the note itself.

Q. May I see it, please? (Note handed to counsel.) This [fol. 88] note that you have referred to—that is a note executed by Marshall B. Roberts and Enid M. Roberts to Constance Childs and Robert F. Childs?

A. Yes.

Q. And you are able to state whether or not this is the note which was subsequently assumed by Arthur C. Phillips, the plaintiff in this case?

A. Yes, sir, it is.

Q. And this paper I would like to have it marked for identification, please.

Mr. Fleming: It has already been admitted, Mr. Devin.

Q. Well, I don't know. Where is it? I know nothing about all the admissions as to these credits concerning which this man has been examined.

Mr. Fleming: A photostatic copy, and we admit it in the reply.

Q. And I admitted the execution of the note in question. If there is a photostatic copy containing the matters here set forth, well and good. But this witness is being examined about this matter.

(Mr. Fleming shows document to Mr. Devin.).

Q. That is good! Now this document, therefore, is the original of the photostatic copy that is filed with the pleadings in this case; is that correct?

A. Yes, sir.

Q. Well, now, Mr. Wunderlich, is there any credit given upon this application for payments by the plaintiff Arthur C. Phillips, of $1857.50, on or about March 25, 1933?

A. The payment was not applied until April 12, 1933.

Q. And are you able to explain to the court why the delay of about a month before it was credited?

A. The only delay was occasioned by the fact that he did not pay the loan in full.

Q. Well, is that any reason why he should not be credited on the day it was paid? Is that the only reason you have?

A. Yes, because it couldn't be credited as paid in full.

[fol. 89] Q. And that is the only reason it was not credited on the day he paid it, because he didn't pay the note in full, in your judgment?

(No answer.)

Q. Now as a matter of fact you don't know the exact date that he paid it at all?

A. He paid it to the Association.

Q. Yes; now at any rate the payment was not credited upon that application until April 21st; is that correct?

A. That is correct; yes, sir.

Q. And secondly, any calculations of interest due upon this application which you have testified to relate to the credit appearing on the note on April 21st, and not to the actual date that Mr. Phillips paid it, if he paid it on March 25th, 1933?

A. The penalty interest is figured on the two subsequent payment which haven't yet been made, the two subsequent installments.

Q. No, I ask you about the interest on the entire obligation, which would be represented in the printed figures as well as the penalty interest, so called. Now if Mr. Phillips paid eighteen hundred and some dollars on March 25th, and didn't get credit for it until April 21st, isn't it a fact that this calculation would require him to pay approximately a month's interest on the same debt or money?

A. I don't know.

Q. You don't know anything about that? That is beyond your experience and knowledge as to——

A. I don't know anything about it.

Q. As a man capable of figuring you know that?

A. I don't know whether it would amount to a month or not.

Q. Well, we will takee it from the 25th of March until the 21st of April, and from that we can——

Mr. Fleming: I object to this line of question. That is assuming he has proved that there was a payment made on [fol. 90] March 21st, but there is no such——

The Court: The witness has just answered that he didn't know the payment date; he is reforming his question to meet that.

Q. I was asking about the figures he testified to. He undertakes to testify here how much was due on this note, in chief, and now I am questioning the correctness of his figures, after asking him whether or not it is not a fact that these figures are based upon the receipt of that money on April 21st, and not upon the actual time that it was paid according to Mr. Phillips' claim on March 25th: is that a fact?

A. I couldn't answer that without——

Q. You don't know whether these figures are based upon giving him credit for the payment on the 21st of April or the 25th of March?

A. They are based upon giving him a credit for the payment on the 21st of April.

Q. Well, now, it took you a long time to get that: Now, Mr. Wunderlich, I wish you would tell me, if you can from this document, how much was due thereon on the 25th of March, 1933?

A. (Examining paper.) There was installment No. 55, amounting to $57.58 interest and $114.67 principal. A little explanation, the regular installment is—do you want it separate?

Q. I want you to figure out if you can and tell the court how much was due on the note on the 25th of March, 1933?

A. All right. Installment 55, $172.25. Installment 56, $172.25. Installment 57, on to a—including a——

Q. When was installment No. 57 due?

A. Let's see; July, 1934.

Q. Now interrupting you right there, I can see your process, and I will ask you whether it is true—as I understand it, you are assistant treasurer of this Federal Land Bank?

A. Yes, sir.

Q. Well, now, from your experience and knowledge, as a [fol. 91] man capable of figuring the amount of interest and principal due upon an obligation are you telling this court that the amount due on that note on March 25, 1933—the amount that would be required to satisfy it up to that date, that you should add thereon the installments due through the succeeding years, which you are appearing to do in your testimony—if your interest is calculated clear up to the due date, and are you saying to this court that these borrowers would have been obligated to have paid that future interest upon that loan in order to have paid it off on the 25th of March, 1933?

A. No, I am not pretending to say that at all.

Q. All right. Then I will ask you once more, how much was due on that note March 25th, 1933?

A. There was an amount of principal due of $2093.68, less whatever the partial payments might have been at that particular time.

Q. Two thousand and what?

A. $2098.63.

Q. Less what, did you say?

A. Any partial payments that might have been made for his credit but not yet applied.

Q. Were there any?

A. I don't know, from this record; there may have been.

Q. Yes. And as a matter of fact that sixty some dollars that you refer to in your previous testimony was not entered there until April 21st?

A. That is correct.

Q. Now as a matter of fact do you know whether or not that credit—at least should be as of the same date, whatever may be correct—is of $1837.50?

A. That I cannot say.

Q. They are down there as of the same day, anyway (indicating)?

A. Yes.

Q. Well, now, Mr. Wunderlich, it has been suggested to me by counsel that the point which I am trying to get you [fol. 92] to state here might be subject of an admission, and if counsel will admit that on the date we have referred to of March 25th—well, I have it the 25th—I have the actual date that he paid it as of March 25th——

(Counsel for both sides here confer privately.)

Q. At any rate, Mr. Wunderlich, it is now suggested that counsel will agree that the amount due upon this loan, on March 28th, 1933, was $2121.83. Now, Mr. Wunderlich, that will relieve you from the necessity of answering me.

Bailiff: Do you want it marked as an exhibit? (refers to paper).

Q. Well, I think it might as well be.

(Paper referred to here marked Exhibit E and same hereto attached and made a part of this bill of exceptions.)

Mr. Fleming: It is understood that this is of the date it appears there—March 28th? (referring to Exhibit E).

Mr. Devin: Oh, yes.

(Defendants rest.)

The Court: Do counsel have anything in rebuttal?

Mr. Devin: Why, no, I don't think I have anything in rebuttal.

(And this was all the testimony and evidence offered in the hearing of this case.)

[fol. 93] And thereupon the court found in favor of the plaintiff as more fully appears in the judgment entry filed in this case on November 18, 1935, and within three days thereafter the defendants filed their motion for new trial, which motion with the caption omitted, appears on the succeeding pages hereof. And thereupon, and within three days after said judgment entry, the defendants filed their amended motions for a new trial which motions with the caption omitted appear in the succeeding pages hereof.

Said motion and amended motions for new trial are as follows:

Motion for New Trial

Now come the defendants, The Knox National Farm Loan Association and The Federal Land Bank of Louisville, and move the Court to set aside the finding and judgment heretofore made herein and to grant a new trial for the following reasons:

1. That said Court erred in overruling the defendants' motions requesting the Court to separately state its finding of facts and conclusions of law.

2. That said decision is not sustained by sufficient evidence.

3. That said decision is contrary to law.

4. Irregularity in the proceedings of the Court.

5. Other errors of law occurring at the trial and excepted to by the said defendants.

Vorys, Sater, Seymour and Pease, Paul Flemming, Armond L. Koethen and Charles L. Bermont, Attorneys for the Above Named Defendants.

Amended Motion for New Trial

Now comes the defendant, The Federal Land Bank of Louisville, and moves the Court to vacate and set aside the finding and judgment heretofore rendered herein and to [fol. 94] grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The Court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. Other errors apparent which were excepted to by said defendant.

Charles L. Bermont, Vorys, Sater, Seymour and Pease, Attorneys for said Defendant.

AMENDED MOTION FOR NEW TRIAL

Now comes the defendant, The Knox National Farm Loan Association, and moves the Court to vacate and set aside the finding and judgment heretofore rendered herein and to grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed [fol. 95] Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. The Court erred in appointing a receiver for defendant and directing said receiver to take over the assets of defendant.

9. Other errors apparent which were excepted to by said defendant.

Charles L. Belmont, Vorys, Sater, Seymour and Pease, Attorneys for said Defendant.

And thereupon the court overruled said motion for new trial and amended motions for new trial, to which rulings of the court in overruling said motions the defendants at the time separately and severally excepted and still except and on the 6th day of December, A. D. 1935, filed this their Bill of Exceptions in said cause.

And thereupon the Clerk of said court, having forthwith notified the plaintiff of the filing of this bill of exceptions and no objection or amendment to said Bill of Exceptions having been filed by said plaintiff said clerk on the 16th day of December, 1935, presented to Hon. Philip L. Wilkins, trial judge as aforesaid, this Bill of Exceptions for allowance and signature by said court as provided by statute.

ORDER SETTLING BILL OF EXCEPTIONS

And thereupon, the court received this Bill of Exceptions on the 16th day of December, A. D. 1935, and said court did on the 16th day of Dec. A. D. 1935 certify that the foregoing, including the exhibits attached hereto and marked respectively A, B, C, D, E and F and made a part hereof, was all of the evidence offered, introduced and admitted on behalf of the plaintiff and on behalf of the defendants on this trial of this cause and did allow, sign and seal this Bill of Exceptions as provided by statute and did immediately

transmit the same to the office of the clerk of said court to [fol. 96] be made a part of the record herein but not spread at large upon the journal according to the statute in such case made and provided all of which is accordingly done as of said September Term, A. D. 1935, of said court.

Philip L. Wilkins, Trial Judge.

[fol. 97] Exhibits marked respectively "A", "B" ,"C", "D", "E" and "F" attached to and made a part of this Bill of Exceptions.

[fol. 98] EXHIBIT "A"

Number of Shares 53. Certificate No. 93. $265.00

Receipt for Stock Held by Knox National Farm Loan Association

This acknowledges that there has been this date issued to A. C. Phillips a member of Knox National Farm Loan Association of Mt. Vernon, State of Ohio, Certificate No. 93 for 53 shares of Capital Stock of the par value of $5 in the above-named Association.

This stock is issued in connection with the loan of $5300.00 made through this Association, and is in amount 5 per centum of the face of the loan. This stock is being held by this Association pursuant to the provision of the Federal Farm Loan Act as collateral security for the payment of the loan, and can not be legally transferred except to a purchaser of the farm mortgaged.

In Witness Whereof, The Secretary-Treasurer of said Association has hereunto set his signature this 24th day of October, 1937.

E. B. Tucker, Secretary-Treasurer.

Notice to Borrower.—This receipt represents your investment in stock on which dividends will be paid. It will be accepted at face value on final payment of loan. If you sell your land this receipt should be transferred to the purchaser and you should collect not less than face value therefor. It can not be legally transferred to anyone other than the purchaser of the land mortgaged, on account of which this stock is issued.

(Seal.)

[fol. 99] EXHIBIT "B"

Classification Report as of April 23, 1935

The Knox County N. F. L. A., Mt. Vernon City, Ohio State.
Number of loans in Force 179. Amount 493,200.00. Classification* 2A.
Indemnity Agreement Adopted March 21, 1931. Previous Classification 2A.

	Assets			
1	Legal Reserve	710.74		
2	Invested Surplus	445.94		
3	Amount Due from F. L. B.			
4	Profits—Indemnity Agreement			
5	Capital Stock Withheld (—)	335.00	1,491.68	
6	Net Deficit			997.60
7	Total			2,489.28
	Liabilities			
8	Loss on Sale of R. E.—Indemnity Agreement	2,489.28		
9	Money Due to F. L. B.—Indemnity Agreement			
10	Advances from F. L. B.—Indemnity Agreement			
11	Deficiency Judgments		2,489.28	
12	Net Surplus			
13	Total			2,489.28
	Contingent Liabilities			
14	R. E. O. Under Indemnity Agreement	11,074.33		
15	Loans Under Foreclosure	6,743.71		
16	R. E. O. by Association		17,818.04	
17	Estimated Loss on Contingent Liabilities			3,563.61
18	Matured, Unpaid Installments & Advances.			
19	Total Contingent Liabilities			
[fol. 100]				
20	Capital Stock Outstanding		24,660.00	
21	Net Deficit		997.60	
22	Per cent. Impairment of Capital Stock			4.04%
23	Excess-Estimated Loss Contingent Liabilities over Net Surplus			.....

* The proceeds of retired Capital Stock will not be refunded in Class 1 Associations if the estimated loss on Contingent Liabilities exceeds the net surplus at any time.

[fol. 101] Federal Land Bank of Louisville

April 23, 1935

Statement of Investment

Judgments, Sheriff's Certificates and Real Estate Owned under Indemnity Agreement

Loan No.	Name	Investment
18657	J. W. Neighbarger	$4,070.78
18658	J. W. Neighbarger	3,408.55
30452	Jay W. Humbert	3,595.00
		11,074.33

[fol. 102] Federal Land Bank of Louisville

April 23, 1935

Statement of Investment

Loans in Foreclosure

Knox County N. F. L. A. of Ohio

Loan No.	Name	Investment
20958	Nettie M. Sheets	$4,017.63
26351	George R. Shira	2,726.08
		6,743.71

[fol. 103] Federal Land Bank of Louisville

April 23, 1935

Statement of Indemnity Account

Knox County N. F. L. A. of Ohio

15781	John B. Carter, Loss on Sale	$1,999.89
15877–23209	C. W. Ealy, Loss on Sale	157.17
	Accrued Interest to 12/31/34	332.22
		2,489.28

[fol. 104] EXHIBIT "C"

Certificate No. 32174. Certificate of Stock. 53 Shares.

The Federal Land Bank of Louisville

In the Fourth Federal Land Bank District

This is to certify that the Knox National Farm Loan Associatioin of Mt. Vernon, County of Knox and State of O. is the owner of fifty-three shares of stock, of the par value of $5.00 each of The Federal Land Bank of Louisville, in the Fourth Federal Land Bank District, as designated by the Federal Farm Loan Board, situated in the City of Louisville, County of Jefferson, in the State of Kentucky, and organized under the Act of Congress approved July 17, 1916, and known as "The Federal Farm Loan Act."

This Stock is not to be transferred or Typothecated.

The holder hereof is entitled to one vote for each share of stock called for in this Certificate at all meetings of shareholders: Provided, that the maximum number of votes which may be cast by any one shareholder shall be twenty.

In Witness Whereof, The President and Secretary of said The Federal Land Bank of Louisville have hereunto set their names and affixed the corporate seal of said Bank this 29 day of May, 1925.

Samuel B. Jones, President. L. B. Close, Secretary.

[fol. 105] EXHIBIT "D"

First Tract: Being lot number 24 in the first quarter, fifth township, and fifteenth range in the United States Military District, according to a sub-divisional survey of said quarter township made by S. W. Farquhar, esquire, and duly recorded in book P, pages 574-5-6 of the Records of Deeds of Knox County; said lot estimated to contain 93.90 acres.

Second Tract: Lying and being in the County of Knox and State of Ohio and in the first quarter of the fifth township, fifteenth range United States Military Lands situ-

ated in Knox County and the State aforesaid and being taken off the southwest portion of lot 23, commencing at the southwest corner of said lot and running north to the southwest corner of the lot owned by Wm. Jones and wife; thence east to the east line of said lot; thence south to the northeast corner of Samuel Van Sickle's lot; thence west to the northwest corner of said lot; thence south to the southwest corner of said lot; thence west along the south line of said lot twenty-three to the place of beginning containing *for forth-three* acres be the same more or less.

Third Tract: Lying and being in the County of Knox and State of Ohio, to wit: 30 acres of land out of the southeast corner of lot 23, in the Rathbone section so called, being in the first quarter of township 5, range 15, United States Military lands in Knox County, Ohio, and more particularly described as follows:

Beginning at the southeast corner of lot #23; running north on the line between lots 23 and 22, a distance equal to 2/3 the length of said line being 97 1/3 poles; thence west such a distance as to include the said 30 acres by running a line south to the south boundary of lot 23 which said last line is to be run parallel to the said line between lots 23 and 22.

MC.

EACH AND EVERY QUESTION MUST BE ANSWERED PLAINLY AND DEFINITELY.

Application No. 53605	Fee Received Amount $9.50 LAS	Loan No. 32174	Record Amount $5300

DON'T WRITE ABOVE THIS LINE. SPACES ABOVE THIS LINE FOR FEDERAL LAND BANK ONLY.

TREASURY DEPARTMENT
Federal Farm Loan
Bureau.

Form 1321

Examined and approved
Farm Loan Board
H.E.B.

APPLICATION OF

(Marshall B. Roberts)
(Enid V. Roberts) ----- P.O. Centerburg, (Town) Ohio (State)
(Constance Roberts Childs)

Robert F. Childs (Husband's or wife's full name) P.O. Centerburg (Town) Ohio (State)

To The Federal Land Bank of Louisville, Louisville, Kentucky
(hereinafter termed bank)

We, the undersigned, hereby make application through the Knox (Name of National Farm Loan Association) of Mt. Vernon (City or Town) Knox (County) Ohio (State) for a loan of Five Thousand, Three hundred----Dollars ($5300.00) for a term of 34½ years, with interest at the rate of 5½% per cent. per annum, payable semi-annually, or such other rate as may have been established by the Federal Farm Loan Board at the time this loan is closed, said interest rate not to exceed 6 per cent. per annum in any event; the principal and interest to be paid on the amortization plan prescribed by the Federal Farm Loan Board. I also hereby subscribe for the amount of capital stock in said association that this loan will involve under the terms of the Federal Farm Loan Act. For said loan I offer as security a first mortgage on the following described real estate:

A. DESCRIPTION AND LOCATION OF PROPERTY. (Fill in plat or land on back hereof).

	Give Accurate Description Copy from Deed.	Section	Township	Range
1	Lot 24, 1st quarter		5"	15
2	1st "		5"	15
3	30 acres out of S E corner of lot 25		5"	15
4	.....			
5	.....			
6	.....			

(East-West) of principal meridian, containing 166 acres (more or less), situated in the County of Knox State of Ohio, and is 1¼ miles by road north from Centerburg which has a population of 800 and is (nearest railroad shipping point) 1¼ miles from Centerburg ..... and is 1¼ miles from Centerburg (Nearest church) (Nearest school) and on a well-traveled main public road and .....miles from an electric or interurban railway line. If not on main public road, can you show right of way thereto? .....

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B. STATUS OF APPLICANT.

1. State occupation or business from which your principal income is derived ...Farming.....
2. State place of actual residence..On the place...How many miles from this land? .....
3. Do you farm this land either personally or by means of hired labor to whom you pay a fixed wage?.....Yes
4. If farm is farmed wholly or partially by tenants on either cash, crop, or share rent plan, give names of tenants and general terms of agreement under which they are farming .....
.....
5. State when you intend to move on this land and farm same, either personally or by means of hired labor, to whom you will pay a fixed wage (give date) .....

C. PURPOSE OF LOAN.

To which of the following four purposes, to-wit (A,B,C,D), do you intend and hereby state you will apply the proceeds of this loan? Describe fully and definitely, under the proper heading, the purpose for which proceeds of loan will be used.

Existing debts to be paid must include only those debts described in paragraph E of this application.

PURPOSES.	DESCRIBE FULLY.	AMOUNT.
(A) To purchase..... acres of land.(Give description and terms of purchase.)	To complete purchase of 66 acres of land from heirs	$4500.00
(B) To provide buildings and improvements. (Give size, material, etc.)	....	
(C) To purchase equipment, fertilizer, live stock, etc. (Describe fully and give amount for each purpose.)	....	
	Cost of loan	50.
(D) To pay existing debts (see par. E)		
For what purpose incurred?	Personal note for machinery	500.00

To pay for stock in National Farm Loan Association (5 percent of the amount applied for).....250.00

Total (this must equal the amount herein applied for) $300.00

(Stamp) Federal Farm Loan Board
Statistical Division WNW

State if land proposed to be purchased is to be included in mortgage given to this bank Yes

INDIANA AND OHIO FORM

5. VALUATION OF PROPERTY. The present cash value of the land and permanent improvements is as follows:

Valuation of Permanent Improvements located on the land proposed to be mortgaged.

Name and number of buildings, etc.	Material	Cost.	Present value.	Amount of insurance now carried.
Main dwelling 1			$3000.00	$2500.00
Other dwellings				
Main barn 1			$2000.00	$1500.00
Other barns 1			500.00	300.00
Other outbuildings			500.00	300.00
Silos None			600.00	400.00
....Total				
.....				
300 rods of wire & rail fence			400.00	

Each and every question must be answered plainly and definitely.

Valuation of Land.
(The acreage classified must agree with total acreage offered as security for this loan.)

VALUATION OF LAND.
(The acreage classified must agree with total acreage offered as security for this loan.)

Number of acres.	Classification	Value per acre	Total value.	
70	Cultivated	70.00	$4900.00	
30	Cultivated Cultivable Pasture	50.00	1500.00	
½	Orchard	100.00	50.00	5
55	Timber	50.00	2750.00	3
4⅔	Waste land		100.00	6
6	Bldgs, lots, etc.	100.00	600.00	0
	TOTAL		9900 00	5

Each and every question must be answered plainly and definitely.

E. ENCUMBRANCE AND DEBTS OF APPLICATION.

Include under this heading all encumbrances, mortgages and liens, etc. against the property offered for security - also all amounts due on account of purchase money, notes, or contracts covering purchase of land.

Name of mortgagee or present holder of mortgage	Amount	Date Incurred	Date may be paid	Rate of Interest	Amount of interest past due	State opposite each item if you expect to pay same with proceeds of this loan.
Total $						

If past due interest, why? .....

You are authorized to pay all existing liens out of proceeds of the loan herein applied for.

My other debts and obligations are as follows (state whether debt is secured by mortgage, etc., and property given as security.)

To whom payable.	Amount	Security given for debt	Date incurred	Rate of interest.	State opposite each item if you expect to pay same with proceeds of this loan.
Centerburg Sav'gs Bank	$500.	Personal	2/10/24	7%	Yes.
Total	$				

F. A summary of my live stock and a financial statement of all my resources and liabilities are as follows:

Kind	No.	Price	Value
Horses	2		125.00
Colts			
Milch cows	4		170.00
Beef cows			
Other cattle			
Calves (under 1 yr)	3		60.00
Sheep	90		720.00
Sows	1		10.00
Other hogs	8		50.00
Pigs (under 3 mos)			
Poultry	80		60.00
Total value of live stock			1195.00

FINANCIAL STATEMENT

Value of land to be mortgaged 166 acres @ 54.80 per a.	9100.00
Value of buildings and improvements on land to be mortgaged	7500.00
Value of other land owned by applicant 43 acres @ $60 per a.	2580.00
Total value of all live stock	1195.00
Total value of machinery, wagons and harness	900.00
Total value of all other property, and cash on hand	1200.00
Total resources,	22475.00

Total amount of mortgage on real estate	$ None
Total amount of chattel mortgages	None
Personal notes and other indebtedness	500.00
Total Liabilities,	500.00
Our total net worth (resourses minus liabilities	$21975.00

Are there any outstanding judgments against you? No. If so, how many and to what amount? 20475

I own farming implements valued at $900.00 sufficient to farm...acres

Are implements housed and protected against inclement weather conditions? Yes

If the above live stock and implements are not kept on the land to be mortgaged, state where they are kept. Sheep partly pastured on other place.

G. PRODUCTS OF THE FARM.

During the last cross season the cultivated portion of land herein described was divided and crops grown thereon as follows:

Acres	Crop. Insert name of crop	Yield per acre	Total Yield	Value	Percentage above or below normal yield.
17	Corn (estimated)	About 25 bu	About 425 bu	$425.00	50% belo
17	Clover hay	About 2 ton	About 34 ton	238.00	Average
9	Timothy "	" 1 "	" 9 "	54.00	"
12	Wheat	10 bu	120 bu	120.00	50% belo
15	Oats	40 bu.	600 bu	270.00	35%above
	Clover seed (sec.crop)		7½ bu	112.50	50%below
70				1119.50	
Realized last year from the sale of livestock				302.21	
Realized last year from the sale of dairy products				40.00	
Realized last year from the sale of poultry products				35.65	
Realized last year from the sale of other products				169.79	
Wool consigned no returns (est.$500.00					
Total value of sales and products produced on this farm				1047.65	2167.15

I will cultivate next season 90 acres of this land. Best money crop of this locality Corn.

H. General. 1840

1. How many years has this land been under cultivate? Settled about
2. How many acres are now in cultivation? 70
3. How many acres can be profitably cultivated? 100
4. For what purpose can acreage be used that is not subject to profitable cultivation? Timber and Pasture.
5. Number of dependable wells on land? 3
6. Acres fenced? All. Kind of fence? Wire & Rail
7. How many acres need ditching or draining? Few spots.
8. How many rods of open ditch on land? About 150 rds.
9. How many acres subject to overflow? None.
10. Is land located within bonded or other drainage district? No.
11. If so, what is the total drainage assessment against this land?
12. Has the drainage project been a success?
13. Do you own both surface and mineral underlying this farm? Yes
14. If there is coal under you land, what is the approximate depth to the first vein? Do no know of any.
15. Is there an existing lease affecting coal or other minerals under this farm? No.

I acquired and came (or excent to acuire and come) into possession of this oroperty in the following manner:

Date acquired	Acres	Purchased or acquired from	If land was purchased from a relative, state relationship.
7/21/23	100	Inheritance	Great Uncle
5/15/24	66	Other heirs	

$450[illegible].00 to be paid in cash and the balance to be paid out of the Estate, which is not as yet completely settled.

Total purchase price $5040.00

Which was settled for as follows:

Cash payment .....

Mortgage or contract .....

Trade Valued at $200. described as follows: Fence.

Each andevery question must be answered plainly and definitely.

H. GENERAL (Continued)

United States Converted ins....Childs $1000.
We carry life insurance Missouri State Life (St.Louis,Mo.) 1000.
Give name and address of any person to whom you have paid or agreed to pay a fee or commission for obtaining this loan. None.
Have you ever applied to a Federal Land Bank or a Joint Stock Land Bank for a loan on this property? No.
If so, give name of bank, date, amount, and reason why loan not completed.....
Have you ever been or are you now indebted to any Federal Land Bank for a farm loan? No. Did you assume theindebtedness because of purchase of land already mortgaged to a Federal Land Bank, or did you obtain the loan by applying through a National Farm Loan Association? Give particulars .....
Has application for a Federal loan by you on any of this or on any other land been withdrawn? No.
If so, give particulars.....
Was your application for loan ever rejected by any National Farm Loan Association or Federal Land Bank? State name and reasons for rejections. No.
Was a loan ever refused by this Land Bank on the land (or any part thereof) covered by this application? No. Date.....
Why? .....
Assessed value of this land for taxation was $10,180.00. Amount of last year's taxes paid $174.96.
Amount of delinquent taxes? None. I own 40 acres or other land value at $2580.00 located in Knox County, State, Ohio, against which are encumbrances not listed
listed in paragraph E amounting to $ None
I am a native of and a citizen of the United States, married single aged Mrs. Childs; wife's age....wife's name... have children, namely ... boys.....girls..,of which... boys aged.....and .....girls aged.....are now living at home on this land.
What date is money desired? As soon as possible
Make amortization payments due the first day of January and the first day of July of each year.

For the purpose of procuring this loan, I have submitted this application to the bank and hereby represent and guarantee that the statements contained herein are true and correct and that I have suppressed no information about the property described which would adversely affect its value. I further represent and guarantee that no suits are pending or judgments unsatisfied against me in any court of record of this State or the United States and that there are no imcumbrances or liens against the property described except as are herein described. I agree to maintain and assign to the bank insurance on permanent insurable improvements to the amount required by the bank. I further represent that I am in open and peaceful possession of the premises described and that my title thereto is not questioned nor do I know of any claims that might give rise to adverse claim of my possession. If this application is accepted and a loan granted hereon by the bank, I agree to furnish at my expense, within fifteen (15) days from the date of receipt of notice of approval of this loan, abstract of title, acceptable in form to the bank, that will show the title perfect in me and the mortgage given the bank a first lien on theproperty described. I agree to pay all fees for recording and releasing instruments necessary to complete the loan. If this loan be completed by the bank, or if this application is withdrawn or cancelled, or the

loan not completed through any action on or of my part, I agree to pay the bank reasonable fee assessed in accordance with rules and terms promulgated by it and approved by the Federal Farm Loan Board for expenses (appraisal, determination of title, etc.) incurred in connection with this application. I further agree to pay to the association through which this application has been filed reasonable charges in order to meet the necessary expenses of the association, provided that such charges shall not exceed amounts to be fixed by the Federal Farm Loan Board, and shall in no case exceed 1 per centum of the amount of the loan. It is understood and agreed that the association charges do not include fees for recording, etc.

If the title to this land is held jointly, authority is hereby given Marshall B. Roberts to become a membe of this association, and to act for and on behalf of the other joint owner or joint owners.

Dated Nov. 5, 1924. (Sign here) Constance Roberts Childs
Enid M. Roberts.
Witness John Cunningham Marshall B. Roberts.

If the title is held by two or more joint owners, all joint owners must sign application.

(Confidential)

REPORT OF THE LOAN COMMITTEE TO THE FEDERAL LAND BANK OF LOUISVILLE

Note: Section 10 of the Farm Loan Act, as amended, provides that the loan committee may designate someone to make an investigation of the security and the application in its behalf, or the committee itself may make the investigation. The result of the investigation must be approved and the report signed by every member of the loan committee

1st. The land on which this report is based is the identical property described in this application and signed by the applicant.
2nd. The farm offered as security is in a good location.
3rd. The soil is (describe kind) black loam of good quality, adapted to the growing of the following commercial crops corn, oats, wheat, hay, etc.
4th. 150 acres can be profitably cultivated, and 16 acres remaining are suitable for pasture.

VALUATION OF PERMANENT IMPROVEMENTS. Located on premises described herein.

Insurable buildings		Non-insurable buildings.
House	$3000.--	
Barn	2000.	
Other buildings	1000.	
Total	5000.00	

VALUATION OF LAND.
(The acreage classified must agree with total acreage offered as security for this loan.)

No. of acres	Classification	Value per acr	Total Value.
70	Cultivated	70	$4900.
30	Cultivated	50	1500.
	Cultivable Orchard		
55	Timber		2750.
	Waste land		
11	Bldg etc		750
			9900.

Fencing 800 rods, value $400.

5th. In our judgment, the present sale price of the property is $16000.

6th. The applicant is a person of good character and habits and is prompt in meeting obligations.

7th The applicant, by virtue of actual farming experience, training, and temperament, is qualified and capable of making a success in the operation of this farm.

8th. This farm, in our judgment, under the management of the applicant will produce a sufficient revenue to sustain the family of the applicaiont and enable him to meet amortization payments as they become due.

9th. The crop yield, as reported by the applicant, was 100% of the average yield in this section. If above or below normal, give the reasons. Past season wet & cold, dry at later end. Whole country way below normal.

10th. The applicant is in good health; belongs to the white race.

11th. Give any furtner information you have bearing on this loan. Applicant inherited this along with other heirs. Object of loan to buy out all heirs but these three, who now have title to the

12th. Will the applicant accept the loan as recommended? Yes property.

Based upon the investigation of the property, its earning power under normal conditions, the solvency, character and qualifications of the applicant, I recommend that a loan be granted for an amount not to exceed $7950.

The foregoing is a report of an investigation made the 5th day of Nov. 1924.

John Cunningham,
Investigator for Loan Committee.

We, the Loan Committee, of the Know National Farm Loan Association, have carefully considered this application and the report of our Investigator, or have personally invested the security, and recommend that a loan be granted for an amount not to exceed $7950.

Now member of this committee nor any person who made the investigation is interested, directly or indirectly, in the loan sought by the within named applicant.

Dated at Mt. Vernon Ohio
8th day of Nov. 1924.
L. R. Kempton,
Secretary-Treasurer.

(This report MUST be signed by. all members of the Loan Committee.
John Cunningham
H. V. Fleming,
Austin Carpenter.

ACTION OF THE BOARD OF DIRECTORS.

The undersigned, Secretary-Treasurer of the within and above named National Farm Loan Association, hereby certifies that the Board of Directors of said association by a favorable vote of a majority of the entire directorate, at the casting of which vote no interested director participated in any manner, has approved and recommended to the Federal Land Bank of Louisville a loan not exceeding $7950. to the within-named applicant on the land offered in said application, and I further certify that said applicant is a charter member of or has been admitted to membership in said association by a two-thirds, or more, vote of the Board of Directors.

Witness my official signature the 29th day of November, 1924.
L. R. Kempton,
Secretary-Treasurer.

FOR USE FEDERAL LAND BANK ONLY.

Action of Executive Committee.
Approved (date)
1-10-25 For $5,300.
subject to the following conditions:

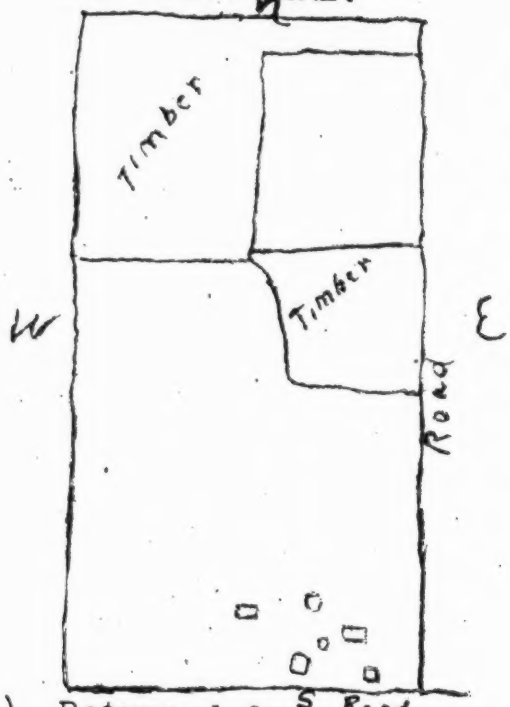
Insurance required 2500

NBC KTM

Executive Committee.

This bank holds an insurance policy in the amount of $5800. in connection with this loan E.L.Morgan.

DRAW PLAT HERE.



(Stamp) Sent to
Dec 4 1924
Appraiser.

(Stamp) Returned from
Jan 6 1925
Appraiser.

[fol. 116] EXHIBIT "E"

The Federal Land Bank of Louisville

Loan No. 32174

A. C. Phillips, Borrower

Amount of Loan		$5,300.00
Addl.	2,395.26	
Credit by payment on principal Reg.	811.06	3,206.32
Balance of Loan		2,093.68
Accrued interest from Jan. 1, 1933 to Mar. 28, 1933		28.15
Compromise Fee		
Balance Due		2,121.83

Date. 3/28/33. N. F. L. A., Knox, Ohio, C. F.

All Funds in payment of this loan must be sent direct to this bank.

[fol. 117] EXHIBIT "F"

Indemnity Agreement

This Agreement, made this 21 day of March 1931, between Knox National Farm Loan Association, of Mt. Vernon hereinafter referred to as the Association, and The Federal Land Bank of Louisville, of Louisville, Kentucky, hereinafter referred to as the Bank, Witnesseth:

Whereas, The Association, under the provisions of the Federal Farm Loan Act and the Association's action pursuant thereto, has or may become liable for the payment of obligations represented by notes and/or mortgages, security deeds, or deeds of trust, hereinafter collectively called "Mortgage(s)" which have been accepted from its members to secure loans made to them by the Bank; and

Whereas, in the event of a default under the provisions of any of such Mortgages the Bank may require payment by the Association under the provisions of the Act, without resorting to foreclosure; and

Whereas, defaults have occurred or may occur in the payment of such Mortgages and by reason thereof it has been or may become expedient or necessary, from time to time, for the Bank to foreclose Mortgages and or to acquire title to some or all of the properties covered by such Mortgages, in order to protect the interests of the Bank and the Association therein, or to charge off the whole or portions of the amounts of its investment in such Mortgages or properties acquired thereunder; and

Whereas, such titles may be acquired by deed, or by purchase at foreclosure sale, for amounts equal to the amounts of indebtedness respectively covered by such Mortgages, or for lesser amounts, in the discretion of the Bank; and

Whereas, the Association desires to indemnify and reim- [fol. 118] burse the Bank for the actual loss, if any, suffered by it in connection with each such Mortgage, and desires that the Bank defer the determination of the amount due it by the Association in any such case, together with the immediate full enforcement of its liability therefor, until such property as the Bank has acquired or shall have ac- [fol. 119] quired in the manner stated herein is disposed of by it; and

Whereas, the Association desires to have offset against determined losses, which may have been or which may be sustained by the Bank on account of any such Mortgages, the net profits that may be realized from the disposition of any property acquired as herein stated, or from the salvage effected in connection with any charged-off Mortgage, so that the ultimate liability of the Association for such losses, if any, may be reduced,

Now, therefore, It is expressly understood and agreed by and between the parties hereto, in consideration of the premises and of the mutual benefits to follow the performance of this Agreement, as follows:

I

Whenever the Bank has acquired or may acquire by purchase at foreclosure sale or by deed from the owner (including the Association), the title to land covered by any Mortgage, or has acquired or may acquire at the foreclosure of any mortgage a sheriff's certificate, master's deed, or other evidence of rights by reason of such foreclosure (except as limited in paragraph VI hereof), the Association's lia-

bility for the debt is and shall be in all respects and to the same extent as if the Bank had not taken such action, whether or not the consideration therefor was equal to, or less than, the amount of the Bank's investment in such Mortgage.

II

For the purpose of securing the performance of this agreement, all or any portion of dividents which may be declared upon the Bank's stock recorded in the name of the Association, any net profit realized from lands acquired in connection with Mortgages, payments on any judgments, any salvage effected in connection with any charged-off Mortgage, and any sums, including the proceeds of retired [fol. 120] stock, which might otherwise be payable by the Bank to the Association, may to the extent deemed necessary by the Bank, be retained by it as a Real Estate Indemnity Account, against which account shall be charged the actual losses, if any, sustained by the Bank on account of the operation, maintenance or disposition (including abandonment) of any such lands, or the disposition of any [fol. 121] sheriff's certificate, master's deed or other evidence of rights acquired by the foreclosure of any mortgage, when such losses are ascertained, together with the amount of the Bank's investment in any Mortgage charged off in whole or in part by the Bank, in its sole discretion, or as required by the instructions of the Federal Farm Loan Board. Upon any amounts so retained, the Bank shall allow interest for the actual period during which such amounts are retained until applied to the reimbursement of the Bank for such losses, or until paid over to the association or applied upon any other obligation of such association, at a rate to be fixed by the bank at least equal to the rate of interest borne by the last issue of the bonds of the Bank. When any acquired land is abandoned, or when any mortgage is charged off by the Bank in whole or in part, any balance of the Bank's investment therein, not already charged against the Real Estate Indemnity Account, may be charged forthwith against said Account. When the Bank shall finally abandon any acquired land as having no saleabel value, or when any mortgage is charged off in whole or in part by the bank, it shall notify the Association in writing of such action. A statement of this ac-

count shall be sent to the Association annually, beginning as of January next.

III

Unless by written agreement between the parties hereto the same is waived or postponed, a settlement shall be made and had between the parties at any time when there are no pending foreclosures of such Mortgages, no such acquired lands unsold, and no other unpaid matured liabilities of the Association to the Bank, or upon the institution of any judicial proceedings which might otherwise prejudice the rights of the Bank as a creditor of the Association, [fol. 122] and in any event on January 1, 1935, and on January 1 of each year thereafter. Such settlement shall constitute an account stated between the parties as to all items included therein.

If the balance of said account shall be in favor of the Association, it shall, if there are no other matured obligations of the Association, no pending foreclosures of Mortgages and no undisposed of properties acquired by the Bank in connection with Mortgages, be paid forthwith to [fol. 123] the Association to the extent necessary to reimburse the association for all matured losses sustained by it in connection with all Mortgages coming within the operation of this Agreement, and for proceeds of retired stock retained by the Bank in said account as provided in paragraph II of this Agreement. Any remaining credit balance shall stand for a period of two years after such casting of accounts as a credit to said Real Estate Indemnity Account against which liabilities when matured, shall be charged as herein provided. Credits in favor of the Association in the Real Estate Indemnity Account shall be applied to the payment of matured liabilities of the Association to the Bank in the chronological order in which such liabilities arose, it being also the intention of the parties hereto that the credits to said Real Estate Indemnity Account shall be used for the purposes herein stated in the chronological order in which they are made. Any privilege of the Association to have any portion of such credit balance applied upon any liability shall cease at the expiration of said two year period.

If such credit balance shall be in favor of the Association and there are pending foreclosures of mortgages or undisposed of properties acquired by the Bank in connection

with such mortgages, such balance, if any, may be retained by the Bank to the extent which it may deem advisable, as a credit against which liabilities of the Association, when matured, may be charged as provided in paragraph II hereof.

If the balance of said account be in favor of the Bank, the Association shall pay such balance forthwith to the Bank unless the latter shall agree in writing to extend for a definite period the time for the payment of said balance.

In computing matured losses chargeable against, and/or [fol. 124] credits to, the Real Estate Indemnity Account in connection with any acquired real estate, sheriff's certificate, master's deed or other evidence of any rights acquired by the foreclosure of any mortgage, which has been disposed of by the Bank, such losses and/or credits, if any, shall not, except at the option of the Bank, expressed in writing, be computed as to any such transaction until the Bank had received full payment of the consideration specified in any contract of sale or exchange thereof.

The account settlements herein provided shall not terminate this Agreement, which shall continue in full force and effect so long as the Bank is the Mortgagee under any Mortgage or retains title to any land acquired in connection [fol. 125] with any such Mortgage; Provided; That on or after January 1, 1935, whenever there are no pending foreclosures, no acquired lands unsold and no other matured unpaid obligations to the Bank by the Association, either party may terminate this Agreement by gaving written notice to the other party, and in the event of the cancellation of this Agreement by the Association, any privilege of the Association to have any portion of any credit balance in the Real Estate Indemnity Account applied upon any liability shall cease.

IV

The Bank shall have the right to sell or exchange acquired real estate, sheriff's certificates, master's deeds, or other evidence of rights acquired by the foreclosure of any mortgage, and to compromise any liability to the Bank, at such time and price and upon such terms as it may in its judgment and discretion deem proper, without releasing the association from its liability for the remainder of the indebtedness.

V

The Bank shall have the right, in its discretion, to take a judgment or judgments against any and all persons or corporations who may be liable in connection with any mortgage coming within the scope of this Agreement, with the understanding that the taking of such judgment or judgments shall not alter or affect the operation of this Agreement with respect to such mortgage, and that any such judgment against the Association shall not be enforced against it in any manner inconsistent with the operation of this agreement.

VI

It is expressly understood that the provisions of this agreement shall not apply to any Mortgages which the Bank has, at the time of the execution hereof, already foreclosed and/or in connection with which the Bank has al- [fol. 126] ready acquired the title to properties, except to the extent that the Bank has, in any such instance, legally preserved or obtained for itself (by valid agreement, judgment or otherwise) the right to enforce a deficiency claim against the Association in connection with such Mortgages; it being the intention of the parties hereto that the liability of the Association and that of its individual members shall not in any manner be increased hereby beyond the liability imposed by the provisions of the Federal Farm Loan [fol. 127] Act; and that legally valid existing deficiency claims may be charged against the Real Estate Indemnity Account in the same manner as other ascertained losses for which the Association is liable under this Agreement or otherwise.

In Witness Whereof, the parties hereto have executed this Agreement in duplicate this 21 day of March, 1931.

The Federal Land Bank of Louisville, by A. L. Brown, President, Knox National Farm Loan Association of Mt. Vernon, Knox Co., Ohio, by John Cunningham, President, E. B. Tucker, Secretary-Treasurer.

Attest: Ralph G. Sams.

Resolution of Directors

"Resolved: That the President and the Secretary-Treasurer be, and they hereby are, authorized to execute on behalf of this Association the above and foregoing Indemnity Agreement."

Certificate of Secretary-Treasurer

The undersigned hereby certifies that the foregoing resolution was duly adopted by the Board of Directors of the Knox National Farm Loan Association of Mt. Vernon on the 21 day of March, 1931; and that the above Agreement was duly executed pursuant thereto.

E. B. Tucker, Secretary-Treasurer of Knox National Farm Loan Association.

[fol. 128] [File endorsements, omitted.]

[fol. 129] In Court of Common Pleas of Knox County

No. 15070

Arthur C. Phillips, Plaintiff,

vs.

The Knox National Farm Loan Association et al., Defendants

Judgment—Filed October 7, 1935.

This day this cause came on to be heard upon the Petition of the plaintiff, the Answer and Cross Petition of the defendant The Federal Land Bank of Louisville, the Answer of the defendant The Knox National Farm Loan Association, the Reply of the plaintiff to the Answer of said defendant The Federal Land Bank of Louisville, the Answer of plaintiff to the Cross Petition of the defendant The Federal Land Bank of Louisville, the Reply of plaintiff to the Answer of the defendant The Knox National Farm Loan Association, and the evidence; and was argued by counsel.

Upon the issues joined by the Petition of plaintiff, the Answer of said defendant The Federal Land Bank of

Louisville, and plaintiff's Reply thereto, and upon the Cross Petition of said The Federal Land Bank of Louisville, and plaintiff's Answer thereto, the Court find that on March 25, 1933, plaintiff paid to said defendant The Federal Land Bank of Louisville, the full amount of the indebtedness he then owed upon the claim secured by the mortgage mentioned and described in said pleadings except the sum of $265.00, and that at said time, said sum of $265.00 was tendered by plaintiff to said defendant, The Federal Land Bank of Louisville, and that said tender was again made by the plaintiff to said defendant in open court at the time of the opening of the trial of this cause, and that said tenders were each refused by said defendant.

[fol. 130] The Court further find that by reason of the tenders aforesaid that upon the payment of said sum of $265.00 said plaintiff is entitled to the surrender by said defendant The Federal Land Bank in Louisville, of the promissory note mentioned and described in its said Cross Petition, and the cancellation and surrender to said plaintiff of the mortgage securing said note also mentioned and described in said Cross Petition.

It is therefore ordered that if said plaintiff deposits with the Clerk of this Court on or before October 1st, 1935, said sum of $265.00 in cash, that then and thereupon said sum so deposited be paid to said defendant The Federal Land Bank of Louisville, in full satisfaction of its claim mentioned and described in its said Cross Petition, and furthermore upon said defendant The Federal Land Bank of Louisville placing in the hands of said Clerk for delivery to said plaintiff said note hereinabove mentioned, duly cancelled, and said mortgage hereinabove mentioned, duly cancelled and released.

It is further ordered that upon default of said defendant The Federal Land Bank of Louisville to accept said sum of $265.00 and place said cancelled note and released mortgage in the hands of said Clerk for surrender to said plaintiff within fifteen (15) days from the time of the deposit by said plaintiff of said sum with said Clerk, that then and thereupon, it is ordered, adjudged, and decreed that the title and possession of said plaintiff Arthur C. Phillips to all and singular the premises as mentioned and described in said Petition and Cross Petition be, and the same hereby are, quieted as against the defendants and each and every

one of them, and all persons claiming under them or any of them; and the said note and the mortgage securing same, as mentioned and described in the said Cross Petition of said defendant, The Federal Land Bank of Louisville, shall [fol. 131] be, and hereby is, cancelled and released, and said mortgage lien cancelled of record by the order, judgment and decree of this Court. It is further ordered that said defendants be, and hereby are, forever enjoined from setting up any claim to said premises, or any part thereof, adverse to the title and possession of said plaintiff, Arthur C. Phillips, his heirs or assigns thereto. It is further ordered, adjudged and decreed that the costs of this action, taxed at $— be paid by said defendant, The Federal Land Bank of Louisville, for which amount judgment is rendered against said defendant.

Upon the issues joined by the Petition of the plaintiff, the Answer of the defendant The Knox National Farm Loan Association, and plaintiff's Reply thereto, and the prayer of said Petition for relief in respect to said defendant The Knox National Farm Loan Association and the appointment by this Court of a Receiver to take charge of its assets and proceed to a liquidation of its assets, it is ordered that this cause be, and hereby is, continued for further orders, judgments and decrees by said Court in respect to said issues.

To all of which judgments, orders and decrees, the said plaintiff, by his counsel, and each of said defendants, said The Federal Land Bank of Louisville, and said The Knox National Farm Loan Association, by their several counsel, except, and thereupon each of said parties gave notice of intention to appeal this cause to the Court of Appeals, and upon application the Court fixes the amount of appeal bond to be given by any such party desiring to appeal said cause at the sum of $200.

Philip L. Wilkins.

Approved: Henry C. Devin, Atty. for Judge of said Court, Pltf. Armand L. Koethen, Atty. for Federal Land Bank of Louisville.

[fol. 132] In Court of Common Pleas of Knox County

[Title omitted]

Request to Separately State Conclusions of Fact From Conclusions of Law Filed November 18, 1935

Now comes defendant, The Federal Land Bank of Louisville, and with a view to excepting to the court's decision on questions of law involved in the trial, requests that the court shall state in writing the conclusions of fact found separately from the conclusions of law.

Charles L. Bermont, Armand L. Koethen, Vorys, Sater, Seymour and Pease, Attorneys for Defendant, The Federal Land Bank of Louisville.

This requests heard and overruled this 18 day of November, 1935.

Philip L. Wilkins, Judge.

[fol. 133] In Court of Common Pleas of Knox County

[Title omitted]

Request to Separately State Conclusions of Fact From Conclusions of Law Filed November 18, 1935

Now comes the defendant, The Knox National Farm Loan Association, and with a view to excepting to the court's decision on questions of law involved in the trial, requests that the court shall state in writing the conclusions of fact found separately from the conclusions of law.

Charles L. Bermont, Armand L. Koethen, Vorys, Sater, Seymour and Pease, Attorneys for Defendant, The Knox National Farm Loan Association.

This request heard and overruled this 18 day of November, 1935.

Philip L. Wilkins, Judge.

[fol. 134] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ORDER OVERRULING REQUESTS FOR SEPARATE CONCLUSIONS OF FACT—Filed November 18, 1935

This day came on to be heard the separate and identical Motions of the defendant, The Federal Land Bank of Louisville, and the defendant, The Knox National Farm Loan Association, requesting the Court to state in writing its conclusions of fact found separately from its conclusions of law; and the Court finding that said Motions were not filed until November 18, 1935, after the trial of said cause, and after the Court's decision thereof, find that said Motions, and each of them, are not well taken, and do overrule each of said Motions.

To all of which findings and rulings the said defendants, and each of them, do, by their counsel, except.

Philip L. Wilkins, Judge.

[fol. 135] IN COURT OF COMMON PLEAS OF KNOX COUNTY

[Title omitted]

ORDER APPOINTING RECEIVER—Filed November 18, 1935

This day this cause came on further to be heard upon the pleadings and the evidence, and the Court being fully advised in the premises find upon the issues joined by the Petition, the Answer of the defendant, The Knox National Farm Loan Association and the Reply of the plaintiff to said Answer, in favor of said plaintiff; and further that said plaintiff has fully and finally paid the entire debt mentioned in said Petition and in the Cross Petition of the defendant, The Federal land Bank of Louisville, and secured by the mortgage mentioned therein, and that thereupon, and by reason thereof, said plaintiff is entitled to the retirement and repayment of his 53 shares of the capital stock of said Knox National Farm Loan Association at the par value of $5.00 per share, aggregating the sum of $265.00, which said amount of $265.00 said plaintiff is entitled to recover from said defendant, The Knox National Farm Loan Association, and that said amount is due to

said plaintiff from said Knox National Farm Loan Association.

It is therefore ordered, adjudged and decreed that said plaintiff, Arthur C. Phillips, recover from said defendant, The Knox National Farm Loan Association said amount of $265.00, with interest thereon from the date hereof at the rate of 6% per annum.

It is further ordered, adjudged and decreed that upon payment to said plaintiff by said defendant, The Knox [fol. 136] National Farm Loan Association of said sum of $265.00, together with interest thereon as hereinabove set forth, that then and thereupon the said shares of stock of said plaintiff in said The Knox National Farm Loan Association be thereupon retired and cancelled and of no more effect.

The Court further finds that said The Knox National Farm Loan Association is a corporation organized and existing under the laws of the United States of America, known as the "Federal Farm Loan Act", and that plaintiff is a stockholder therein and is liable by law to be subjected to an assessment upon his holdings of stock in said corporation for the raising of funds to pay and satisfy certain of the debts and liabilities of said defendant, The Knox National Farm Loan Association. The Court further finds that said defendant, The Knox National Farm Loan Association is now insolvent and that it has been insolvent for and during the entire time since March 25, 1933, at which time the plaintiff tendered to the defendants in this case the full amount due upon the debt hereinabove mentioned, and made demand and request upon the defendants for the retirement and repayment to him at par value of his said 53 shares of the capital stock of said defendant The Knox National Farm Loan Association, which was then and there refused by said defendants and by said act said plaintiff has been obliged to continue since said date as a stockholder of said defendant The Knox National Farm Loan Association against his will and desire. The Court further finds that since March 25, 1933, said defendant The Knox National Farm Loan Association has been continuously engaged in the business of making new and further loans to new borrowers for and on behalf of the defendant The Federal Land Bank of Louisville, for which new loans said Association has made itself contingently

liable and responsible to the payee, and that said new loans made since March 25, 1933, and up to the time of the com-
[fol. 137] mencement of this action have aggregated in amount more than $100,000.00. The Court further find that said plaintiff, by reason of the facts herein found and the judgment herein rendered, is entitled to the liquidation of the business and affairs of said defendant, The Knox National Farm Loan Association.

Thereupon, upon Motion of said plaintiff and upon the evidence adduced, and after argument by counsel, the Court find that proper notice having been given to the defendants and that it is necessary and proper that a Receiver be appointed in accordance with the prayer of the Petition herein, and that the appointment of a Receiver will best protect the property and assets of said defendant, The Knox National Farm Loan Association, and be for the best interests of the parties hereto, and for the best interests of the creditors and stockholders of said defendant, The Knox National Farm Loan Association.

It is Therefore Ordered, Adjudged and Decreed, That Harry W. Koons, a citizen and resident of said County, be, and hereby is, appointed Receiver under the direction and authority of this Court of all and sig*n*ular the property, assets, rights and interests of said defendant, The Knox National Farm Loan Association, of whatsoever kind and wheresoever situate, together with all of its books of accounts, records, papers, contracts, choses in action, securities and cash on hand, together with deeds, leases, bills and accounts receivable and assets of every kind. And said Receiver is hereby authorized to immediately take possession of any and all property, and to use, manage and conduct the business and affairs of said defendant, The Knox National Farm Loan Association, in accordance with his best judgment and discretion, and the orders of this Court, and so as to preserve and protect the assets and property of said Association and prevent waste thereof and prevent
[fol. 138] increases and additions to its liabilities and contingent liabilities. And in accordance with his discretion, to appoint, employ, discharge and fix the compensation of such Agents, and employees, and attorneys as he may find reasonably necessary and proper in the operation and carrying on of his duties as such Receiver. And furthermore, to make payments and disbursements from moneys

on hand or received belonging to said defendant Association as may be proper and reasonably necessary in carrying out this order. It is further ordered that said Receiver be, and hereby is, authorized and empowered to institute and prosecute any suits or legal actions that may be necessary or proper in his judgment for the protection of the property and Trust hereby vested in him, and likewise to defend any and all such actions as may be necessary for the protection of the property rights and interests herein placed in the charge of said Receiver.

It is further ordered that within ten days said Receiver cause to be filed in this Court an application for the appointment of three disinterested persons who shall, under oath, truly inventory and appraise all of the property, real and personal of said defendant Association, and thereafter make return of said appraisal to this Court within sixty days from the date of their appointment. It is further ordered that said Receiver proceed to liquidate said defendant corporation, The Knox National Farm Loan Association, by collecting and realizing upon its assets, and by payment of its true debts and obligations, including the judgment of plaintiff herein, and make due report of his proceedings hereunder to this Court.

It is further ordered that said Receiver open and keep books of account, entering therein receipts and disbursements pertaining to the Trust herein created and established.

It is further ordered that said Receiver give bond in the [fol. 139] sum of $—, conditioned that he will well and truly perform the duties of his office and duly account for all money and property that may come into his hands, and conform to, and perform, all things which he may be directed to do by this Court, and that said bond shall be with a surety or sureties to the satisfaction of the Clerk of this Court, and filed in the office of said Clerk.

It is further ordered that officers, directors, agents and employees of said defendant, The Knox National Farm Loan Association, and all other persons be, and they are hereby required forthwith upon the demand of said Receiver or his duly authorized agent, to turn over and deliver to said Receiver, or to his agent, any and all property belonging to said defendant corporation of any kind and description in his, its, or their, hands or control, and

each of said officers, directors, agents and employees are hereby enjoined and restrained from interfering in any manner whatsoever with the possession, control or management of any part of said property by said Receiver, or from interfering in any way to prevent the discharge of his duties as such.

It is further ordered that said Receiver be, and hereby is, authorized and directed, until the further order of this Court, to deposit any funds that may come into his hands belonging to said Trust in The Knox National Bank in Mt. Vernon.

It is further ordered that any party in interest may apply to this Court for further directions in reference to the property and business of said defendant, The Knox National Farm Loan Association as aforesaid, and that the Court reserves the right to make any other orders in respect to the Receivership herein established and to control the conduct of said Receiver and to rescind or modify this order.

To all of which, including the appointment of the Re- [fol. 140] ceiver as herein set forth, said defendants, and each of them do except.

Philip L. Wilkins, Judge.

[fol. 141] In Court of Common Pleas of Knox County

[Title omitted]

Motion for New Trial—Filed November 19, 1935

Now come the defendants, The Knox National Farm Loan Association and The Federal Land Bank of Louisville, and move the Court to set aside the finding and judgment heretofore made herein and to grant a new trial for the following reasons:

1. That said Court erred in overruling the defendants' motions requesting the Court to separately state its finding of facts and conclusions of law.

2. That said decision is not sustained by sufficient evidence.

3. That said decision is contrary to law.

4. Irregularity in the proceedings of the Court.

5. Other errors of law occurring at the trial and excepted to by the said defendants.

Vorys, Sater, Seymour and Pease, Paul Flemming, Armond L. Koethen and Charles L. Bermont, Attorneys for the above named defendants.

[fol. 142] In Court of Common Pleas of Knox County

[Title omitted]

Amended Motion for New Trial—Filed November 21, 1935

Now comes the defendant, The Federal Land Bank of Louisville, and moves the Court to vate and set aside the finding and judgment heretofore rendered herein and to grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The Court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. Other errors apparent which were excepted to by said defendant.

Charles L. Bermont, Vorys, Sater, Seymour and Pease, Attorneys for Said Defendant.

[fol. 143] In Court of Common Pleas of Knox County

[Title omitted]

Amended Motion for New Trial—Filed November 21, 1935

Now comes the defendant, The Knox National Farm Loan Association, and moves the Court to vacate and set aside the finding and judgment heretofore rendered herein and to grant a new trial of this case for the following reasons:

1. Said finding and judgment is not sustained by sufficient evidence.

2. Said finding, judgment and decision is contrary to law.

3. Errors of law occurring at the trial and excepted to by defendant.

4. Irregularity in the proceedings of the Court.

5. The Court erred in overruling defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law.

6. The Court erred in its finding that defendant's motion requesting the Court to state in writing the conclusions of fact found separately from the conclusions of law was filed Nov. 18, 1935, instead of Nov. 13, 1935.

7. The judgment should have been for the defendant instead of the plaintiff.

8. The Court erred in appointing a receiver for defendant and directing said receiver to take over the assets of defendant.

9. Other errors apparent which were excepted to by said defendant.

Charles L. Bermont, Vorys, Sater, Seymour and Peace, Attorneys for Said Defendant.

[fol. 144] In Court of Common Pleas of Knox County

[Title omitted]

Order Overruling Motions for New Trial: Filed December 6, 1935

This day this cause came on for hearing on the motion of the defendants for a new trial and on the amended motions of defendants for a new trial, said motions having been filed within three days subsequent to the judgment entry herein. Upon consideration thereof the court finds that each and all of said motions are not well taken and the same are overruled, to each of which actions and rulings of the court the defendants and each of them severally except.

Philip L. Wilkins, Judge.

[fol. 145] In Court of Appeals, Knox County, Ohio

No. 380

The Knox National Farm Loan Association and The Federal Land Bank of Louisville, Plaintiffs in Error,

vs.

Arthur C. Phillips, Defendant in Error

Petition in Error—Filed December 6, 1935

Plaintiffs in error say that at the September Term, 1935, towit, on November 18, 1935, of the Court of Common Pleas of Knox County, Ohio, defendant in error recovered a judgment by the consideration of said court against plaintiffs in error in an action then pending wherein defendant in error was plaintiff and plaintiffs in error were defendants,

said action being numbered 15070 on the dockets of said Court of Common Pleas, a transcript of the docket and journal entries whereof is filed herein.

There is error in said record and proceedings in this, towit:

1. Said court overruled each of the motions of plaintiffs in error for a new trial, to each of which rulings of the court plaintiffs in error at the time severally excepted.

2. Said court erred in finding that defendant in error was entitled to retirement and repayment for 53 shares of the capital stock of The Knox National Farm Loan Association, to which ruling of the court plaintiffs in error at the time excepted.

3. Said court erred in finding that The Knox National Farm Loan Association was indebted to defendant in error in the sum of $265.00, to which finding of the court plaintiffs in error at the time excepted.

4. Said court erred in rendering judgment in favor of [fol. 146], defendant in error and against plaintiff in error, The Knox National Farm Loan Association, to which judgment of the court plaintiffs in error at the time excepted.

5. Said court erred in ordering plaintiff in error, The Knox National Farm Loan Association to retire and cancel said 53 shares of the capital stock of The Knox National Farm Loan Association, to which order of the court plaintiffs in error at the time excepted.

6. Said court erred in finding that defendant in error was entitled to liquidation of the business and affairs of plaintiff in error, The Knox National Farm Loan Association, to which finding of the court plaintiffs in error at the time excepted.

7. Said court erred in sustaining the motion of defendant in error for the appointment of a receiver for plaintiff in error, The Knox National Farm Loan Association, to which ruling of the court plaintiffs in error at the time excepted.

8. Said court erred in appointing Harry W. Koons, receiver of plaintiff in error, The Knox National Farm Loan

Association, to which appointment and decree plaintiffs in error at the time excepted.

9. Said court erred in authorizing said receiver to take possession of the assets of plaintiff in error, The Knox National Farm Loan Association, and to manage and conduct the business of said plaintiff in error and otherwise to act as provided in said judgment entry, to which order and decree of the court plaintiffs in error at the time excepted.

10. The finding and judgment of the court are not sustained by sufficient evidence.

11. The finding and judgment of the court are not sustained by any evidence.

12. The finding and judgment of the court are cont-ary [fol. 147] to the weight of the evidence.

13. The finding and judgment of the court are contrary to law.

13. The judgment of the court should have been in favor of plaintiffs in error and against defendant in error.

15. Other errors and irregularities occurring at the trial and prejudicial to plaintiffs in error, to which plaintiffs in error at the time excepted.

Wherefore, plaintiffs in error pray that said judgment may be reversed and that plaintiffs in error may be restored to all things lost thereby.

Armond L. Koethen, Chas. L. Bermont, Vorys, Sater, Seymour & Pease, Attorneys for Plaintiffs in Error.

[fol. 148] In Court of Appeals, Knox County, Ohio

[Title omitted]

Waiver of Service of Summons in Error—Filed December 10, 1935

Now comes Arthur C. Phillips, by H. C. Devin, his attorney of record, and waives the issuance and service of sum-

mons in error and voluntarily enters his appearance herein this 7th day of December, 1935.

Arthur C. Phillips, by Henry C. Devin, His Attorney.

[fol. 149] IN COURT OF APPEALS OF OHIO

OPINION OF APPEALS OF OHIO

By LEMERT, P. J.:

This cause comes into this court upon a petition in error from the Court of Common Pleas of Knox County, Ohio. In the court below the following facts were either admitted or proven:

1. At the trial of the case it was stipulated and agreed by counsel that the allegations of the petition of the plaintiff below are true and the facts therein stated are thereby accepted as fully proven.

2. Upon presentation of the case it was stipulated that the defendants below agreed and admitted that the plaintiff in error, The Knox National Farm Loan Association was, on March 25, 1933, also at the time of the commencement of this action, and is now, insolvent.

3. It was also stipulated and agreed that said The Knox National Farm Loan Association has been, since March 25, 1933, being the date Phillips paid the full amount of his loan except the face value of his stock in said association, $265.00, and demanded its application at face value as final payment upon his loan, continuously engaged in the business of making new and further loans to new borrowers, for and on behalf of said, The Federal Land Bank of Louisville, for which new loans said association has made itself contingently liable and responsible to the payee, and that said new loans made since March 25, 1933, and up to the time of the commencement of this action aggregate in amounts more than $100,000.00.

4. In addition to the admissions by the defendants below of allegations of the petition concerning matters hereinafter mentioned, the said plaintiff below has also introduced in evidence the original receipt and agreement he

[fol. 150] received from said The Knox National Farm Loan Association, October 24, 1927, relative to the deposit of his 53 shares of capital stock in said association, "In connection with the loan of $5300.00 made through this association."

The receipt and agreement is undisputed, and contains provisions as follows:

(a) "This stock is being held by this association pursuant to the provisions of the Federal Farm Loan Act, as collateral security for the payment of the loan."

(b) "Notice to borrower.—This receipt represents your investment in stock on which dividends will be paid. It will be accepted at face value on final payment of loan."

5. At the beginning of the trial of the case, Phillips again made tender to the plaintiffs in error of the sum of $265.00, as in full payment of his ntortgage debt, on condition that the note and mortgage which said Phillips had assumed would be cancelled and released. This tender was refused by the defendants below.

6. In support of its cross petition, the plaintiff in error, The Federal Land Bank of Louisville, introduced:

(a) The original note and mortgage assumed by Phillips (by agreement photostatic copy to be used in lieu of original), and the testimony of a witness as to the amount claimed due thereon if Phillips' debt is not to be considered as paid March 25, 1933, when he paid $1837.50 and tendered the surrender of his said stock at its face value of $265.00.

(b) An agreement between said The Knox National Farm Loan Association and The Federal Land Bank of Louisville, which, I understand, restates the agreement of said association to indemnify said bank in respect to all loans made through said association, and to its stockholders.

[fol. 151] It is admitted and undisputed that the plaintiffs in error in the instant case operate under and are subject to the provisions of federal laws known as the Federal "Farm Loan Act", being a part of Title 12 of the United States Statutes. Section 721 of said title reads as follows:

"Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal Land Bank of its district it shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Federal Farm Loan Boards, be paid off at par and retired, and it shall be paid off and retired upon full payment of the mortgage loan. In such case the National Farm Loan Association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued."

Section 733 of said act in part reads as follows:

"Said capital stock shall be paid off at par and retired upon full payment of said loan."

The language of the statutes just quoted is clear, plain and definite. It will be noted that there is no provision under this law whereby the plaintiffs in error can escape the definite requirement that when and if Phillips pays off his mortgage loan that The Knox National Farm Loan Association must pay off his stock at par and retire same. At the same time the Federal Land Bank is required to pay off at par and retire the corresponding shares of its stock issued in connection with this loan to The Knox National Farm Loan Association, and of course the proceeds should be applied on the borrower's mortgage debt. The law makes no other provision for any other course to be followed no matter whether The Knox National Farm Loan Association is solvent or insolvent.

It is to be noted that in addition to the plain provision [fol. 152] of the law as above quoted, we have the fact in the instant case that the plaintiff in error, The Knox National Farm Loan Association, executed and delivered to the defendant in error, Phillips, its written agreement, dated October 24, 1927, setting forth its definite promise in reference to the redemption of the stock in question at face value on final payment of the loan. The language of this agreement,

where it refers to the receipt given to Phillips for his 53 shares of capital stock, is as follows:

"It will be accepted at face value on final payment of loan."

Therefore we have in this case not only the absolute and definite requirements of the federal law, but also the definite agreement and promise of The Knox National Farm Loan Association, both to the effect that upon final payment of the loan the stock held by Phillips was to be paid off at par, and would be, in fact, accepted at face value in connection with the final payment aforesaid.

Counsel for plaintiffs in error stress the decision of the Supreme Court of North Dakota, in the case of Byrne vs. Federal Land Bank of St. Paul, 237 N. E., 797, claiming that this decision supports the claim that the plaintiffs in error are relieved from complying with the Federal Statute in respect to the redemption of Phillips' stock, on account of the insolvency of the said The Knox National Farm Loan Association.

Upon a careful reading of this opinion and especially its application to the language of Section 721 of the federal law above quoted, it appears that the Dakota court seems to concede that, taking the language of the section by itself, plaintiffs in the instant case would be required to pay off at par and retire the shares of stock in question, but the court in that case says:

"But this is only a portion of the act. When we con- [fol. 153] sider the act as a whole, it is apparent that Congress did not intend the farm loan association to pay off the stock at par when it had nothing with which to pay the stock."

We are of the opinion that the Byrne case should not apply to the instant case and should be definitely distinguished from it, for the reason that in the instant case the association gave to Phillips, under date of October 24, 1927, its written agreement and promise that the receipt given by it to said Phillips for capital stock of the par value of $265.00 would be accepted at face value on final payment of Phillips' loan. For this reason alone we are of the opinion that the Byrne case should not apply. It does not appear in the Byrne case that the plaintiff held any such

specific promise on the part of the association. Byrne had relied entirely upon the provisions of Section 721 of the Federal Farm Loan Act, hereinabove mentioned, and the insolvency of the defendant association was conceded and it was in actual liquidation.

It should be noted in the instant case that primarily this cause is one brought by a citizen and resident of the state of Ohio, to quiet title in respect to real estate located entirely within said state. Under such circumstances federal courts will follow the laws of the state in which real property is located in determining questions involving the title to that property.

In Re Barnett, 12 Fed., 2nd Ed., 73 76.

The record discloses in the instant case that Phillips is both a creditor and a stockholder. That being true, he should not be obliged to permit this confessed insolvent corporation to continue in a business that is apparently fraught with many hazards and has already resulted in considerable losses. If Phillips has no remedy under the law of the state of Ohio, it would be a monstrous and absurd proposition that this defendant being both a creditor and [fol. 154] stockholder, must sit back and take it, while this association repudiates its definite contract and continues to engage in a hazardous business that will likely result in further losses and may reach a place where Phillips as a stockholder would be subjected to an assessment upon his stock to pay further losses.

It is admitted that the association made a definite promise and agreement to pay Phillips this sum of money if and when he paid his loan. There is no contention but what Phillips has paid the loan in full and has complied with the order of the trial court in this respect. It therefore follows that he is entitled to recover judgment against the association for the amount promised and agreed to be paid.

It is admitted that the Association refused to accept the receipt from which the above is quoted at face value on final payment of the loan. This makes an entirely different situation than appears in any of the cases cited by counsel for plaintiffs in error. When this Association fails to keep this agreement, Phillips is entitled to a judgment for the amount promised him.

Counsel for plaintiffs in error cite a number of Ohio cases pertaining to the rights and claims of stockholders and members of Ohio Building & Loan Associations. Such

rights and claims in Ohio are all subject to specific statutes and are subject to exclusive remedies applicable under the Ohio law to Building & Loan Associations and the members and stockholders thereof. These authorities have no application to the case at bar.

We now come to the last proposition submitted by counsel for plaintiffs in error—that the trial court erred in appointing a receiver for The Knox National Farm Loan Association, because it was without authority of law and especially because the provisions of paragraphs 5 and 6 of Section II, 894 of the General Code do not grant such au- [fol. 155] thority. We note in paragraph 5 of the above section the following:

"In the cases provided in this title, and by special statutes when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights."

This whole section of the General Code is included in Title 4, and this title is devoted to procedure in Common Pleas Court. Included therein is Section 11901, which provides for actions in said court to quiet title, and one of the features of this action brought in the court below by the plaintiff below is an action to quiet title. The insolvency of The Knox National Farm Loan Association being an admitted fact, even though courts have held that mere insolvency may not be a sufficient ground in itself in standing alone for the appointment of a receiver, it is apparent from the record in this case that this insolvency, coupled with the other admitted facts relative to this Association appearing of record, gave the trial court ample authority within its discretion for the appointment of a receiver.

Receivership is not the only and ultimate relief sought by plaintiff below, because he asks for the winding up of the business and affairs of the Association, and in view of the fact that he is both a creditor and stockholder, we are of the opinion that he has a right to demand that this corporation, which has already made a record for definite losses and is now insolvent, should be obliged to wind up its business, distribute its assets among its creditors as far as they may go in paying its debts, and save its stockholders from further losses and possibly double liability assessment if it is permitted to continue operations as in the past.

Just one closing word with reference to the jurisdiction of the court below in this case. We note in the Supreme Courts Reporter of January 15, 1936, the case of the United [fol. 156] States v. Bank of New York & Trust Company. The fifth syllabus of the case provides:

"Grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive."

Chief Justice Hughes, on page 348 of the 56th Supreme Court Reporter, speaking for the court, says:

"The fact that the complainant in these suits is the United States does not justify a departure from the rule which would otherwise be applicable. The government invokes and confers jurisdiction upon the District Court to entertain all suits of a civil nature brought by the United States. The government insists that the United States is entitled to have its claim determined in its own courts. But the grant of jurisdiction to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction. It is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive. Upon the state courts of the union, rests the obligation to guard and enforce every right secured by the Constitution and laws of the United States whenever those rights are involved in any suit or proceedings before them. In this instance it cannot be doubted that the United States is free to invoke the jurisdiction of the state court for the determination of its claim, and the decision of the state court of any federal question which may be presented upon such an invocation, may be reviewed by this court, and thus all the questions which the government seeks to raise in these suits may be appropriately and finally decided."

So that, from a careful examination of the record before us in this case, we are of the opinion that the finding and judgment of the Court of Common Pleas should be and the same is hereby affirmed. Exceptions may be noted.

Montgomery, J., and Sherick, J., concur.

[fol. 157] IN COURT OF APPEALS, KNOX COUNTY, OHIO

Cause No. 380

THE KNOX NATIONAL FARM LOAN ASSOCIATION et al., Plaintiffs in Error,

vs.

ARTHUR C. PHILLIPS, Defendant in Error

JUDGMENT—Filed April 16, 1936

This cause came on for hearing upon the Petition in Error, the Transcript, and the original papers and pleadings from the Court of Common Pleas, of Knox County, and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiffs in error his costs herein expended, taxed at $—, for which judgment is hereby rendered in favor of said defendant in error and against said plaintiffs in error.

And the Court being of the opinion that there was reasonable ground for proceedings in error, allow no penalty.

It is further ordered that a special mandate be sent to the Court of Common Pleas of Knox County, for execution upon this judgment and this cause is remanded to said Common Pleas Court for further procedure.

To all of which judgment, finding, order and decree, plaintiffs in error except.

Approved: John M. Rankin.

Roger D. Branigin, of Counsel for Plaintiffs in Error.

Henry C. Devin, Counsel for Defendant in Error.

[fol. 158] IN COURT OF APPEALS, KNOX COUNTY, OHIO

[Title omitted]

NOTICE OF APPEAL ON QUESTIONS OF LAW—Filed May 5, 1936

To Arthur C. Phillips, Appellee:

You will take notice that appellants, within the time required by law, will appeal to the Supreme Court of Ohio on

questions of law and upon conditon that a motion to certify the record be allowed by said court from the judgment of the Court of Appeals of Knox County entered in this cause on the 16th day of April, 1936, affirming the judgment of the Court of Common Pleas of Knox County, Ohio, entered on November 18, 1935, wherein said Court of Common Pleas rendered judgment in favor of said Arthur C. Phillips, Appellee and against The Knox National Farm Loan Association, Appellant, for the sum of $265.00 with interest and costs and appointed a receiver to liquidate and wind up the affairs of said The Knox National Farm Loan Association, Appellant.

This notice is given you, and filed as, and is, the separate notice of The Knox National Farm Loan Association, Appellant and The Federal Land Bank of Louisville, Appellant.

Paul F. Fleming, Vorys, Sater, Seymour and Pease,
Attorneys for The Knox National Farm Loan Association and The Federal Land Bank of Louisville, Appellants.

Dated May 4, 1936.

[fol. 159] IN SUPREME COURT OF OHIO

No. 26013

ARTHUR C. PHILLIPS, Plaintiff and Appellee,

vs.

THE KNOX NATIONAL FARM LOAN ASSN., Defendant and Appellant

ORDER OVERRULING MOTION FOR ORDER DIRECTING COURT OF APPEALS OF KNOX COUNTY TO CERTIFY ITS RECORD—June 24, 1936

It is ordered by the Court that this motion be, and the same hereby is, overruled.

Clerk's certificate to foregoing paper omitted in printing.

[fol. 160] IN COURT OF APPEALS OF OHIO

MANDATE TO COURT OF COMMON PLEAS—Filed April 16, 1936

The State of Ohio, Knox County, Court of Appeals, February Term, A. D. 1936, to the Honorable Court of Common Pleas in and for Knox County, Ohio, Greeting:

At the term of the Court of Appeals, within and for said County, begun and held at Mt. Vernon, Ohio, on the 18th day of February, 1936, before Hon. Chas. C. Lemert, Presiding Judge, and Hon. Clyde C. Sherick and Hon. Chas. W. Montgomery, Judges, among other proceedings then and there had by and before said Court, as appears by its Journal, is the following, towit:

THE KNOX NATIONAL FARM LOAN ASS'N et al.

vs.

ARTHUR C. PHILLIPS

This cause came on for hearing upon the Petition in Error, the Transcript, and the original papers and pleadings from the Court of Common Pleas, of Knox County, and was argued by counsel; on consideration whereof, the Court find there is no error apparent on the record in said proceedings and judgment.

It is therefore considered by the Court that the judgment aforesaid be, and the same hereby is, affirmed; and that the defendant in error recover from the plaintiffs in error his costs herein expended, taxed at $—, for which judgment is hereby rendered in favor of said defendants in error and against said plaintiffs in error.

And the Court being of the opinion that there was reasonable ground for proceedings in error, allow no penalty.

It is further ordered that a special mandate be sent to the Court of Common Pleas of Knox County, for execution [fol. 161] upon this judgment and this cause is remanded to said Common Pleas Court for further procedure.

To all of which judgment, finding, order and decree, plaintiffs in error except.

We therefore command you, that without delay you cause said judgment to be carried into execution, according to the tenor thereof.

Witness my signature as Clerk of our said Court of Appeals, and the *sale* thereof affixed, at Mt. Vernon, Ohio, this 16th day of April, 1936.

Paul E. Bateman, Clerk, by —— ——, Deputy.
(Seal.)

[fol. 162] In Court of Appeals, Knox County, Ohio

[Title omitted]

Precipe for Transcript of Record—Filed July 14, 1936

To the Clerk:

You are hereby directed to prepare a transcript of and certify and transmit to the Clerk of the Supreme Court of the United States, the entire record in this case, including all pleadings, papers, opinions and testimony and all proceedings in this court, and a copy of the docket and journal entries filed in this court.

Vorys, Sater, Seymour & Pease, Attorneys for Defendants.

[fol. 163] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 164] Supreme Court of the United States

Order Allowing Certiorari—Filed November 9, 1936

The petition herein for a writ of certiorari to the Court of Appeals of the State of Ohio is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
SEP 23 1936
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 389

THE KNOX NATIONAL FARM LOAN ASSOCIATION, A CORPORATION, AND THE FEDERAL LAND BANK OF LOUISVILLE, A CORPORATION,

Petitioners,

vs.

ARTHUR C. PHILLIPS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KNOX COUNTY, OHIO.

ROGER D. BRANIGIN,
Louisville, Kentucky,
PEYTON R. EVANS,
GERALD E. LYONS,
MAY T. BIGELOW,
Washington, D. C.,
Attorneys for Petitioners.

Of Counsel:
JOHN M. RANKIN,
Columbus, Ohio.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No.

THE KNOX NATIONAL FARM LOAN ASSOCIATION, A CORPORATION, AND THE FEDERAL LAND BANK OF LOUISVILLE, A CORPORATION,

Petitioners,

vs.

ARTHUR C. PHILLIPS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KNOX COUNTY, OHIO.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners respectfully pray for a writ of certiorari herein to review the final decision and judgment (R. pp. 107, 114) of the Court of Appeals of Knox County, Ohio, which is the highest court of said State having jurisdiction over this case, except upon the discretionary assumption of jurisdiction by the Supreme Court of Ohio, the court

of last resort of said State.* Said decision and judgment became final June 24, 1936, when the Supreme Court of Ohio overruled petitioners' motion for an order directing said Court of Appeals to certify its record to said Supreme Court (R. p. 115.)†

Neither the decision of the Court of Appeals (rendered April 16, 1936), nor the order of the Supreme Court of Ohio overruling said motion, has yet been reported in the official reports of either court.

The jurisdiction of this Court is invoked under § 237 of the Judicial Code, as amended (28 U. S. C. § 344 (b)).

Statement of Facts.

Petitioners, hereinafter referred to as the Association and the Bank, are corporations chartered by the Federal Farm Loan Board (now Farm Credit Administration) pursuant to the provisions of an Act of Congress approved July 17, 1916, known and cited as the Federal Farm Loan Act (12 U. S. C. §§ 641, *et seq.*; 39 Stat. 360).

The Association is a cooperative membership corporation. Its office is located in Knox County, Ohio. It is engaged in the business of procuring farm mortgage loans for its farmer members, upon its indorsement, from the Federal Land Bank of Louisville, Louisville, Kentucky.

The provisions of law which control the organization, operation and dissolution of the Association are contained in §4, §§ 7–11, § 25 and § 29 of said Act as amended (12

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* Constitution of Ohio, Art. IV, § 6. "* * * judgments of the courts of appeal shall be final in all cases except * * * cases of public or great general interest in which the supreme court may direct any court of appeals to certify its record to that court."

† *American Railway Express Co.* v. *Levee*, 263 U. S. 19, 20.

U. S. C. § 676, §§ 711–761, § 921 and §§ 961–966), and are reviewed at length in this court's opinion in *Federal Land Bank* v. *Gaines*, 290 U. S. 247.

Respondent became a member and shareholder of the Association in 1927. At that time he purchased a farm in Knox County, Ohio, and assumed a mortgage which had been given by his vendor to the Bank to secure a loan obtained through the Association. At the same time, respondent assumed the stock interests of his vendor (53 shares of paid-up stock in the Association, with a par value of $5 each), and became a member of the Association, as permitted by § 12, Sixth, of the Act (12 U. S. C. § 771, Sixth) (R. p. 47). Respondent's stock was held by the Association as collateral security for the payment of said loan, pursuant to the requirement of §§ 7 and 8 of the Act (12 U. S. C. §§ 721, 733). The Association's receipt for such stock stated, in part, that respondent's stock in the Association "will be accepted at face value upon final payment of the loan." No provision of this character was contained in the Act or in the note and mortgage held by the Bank (R. pp. 29, *et seq.*).

The mortgage loan was payable in installments over a period of 34½ years, but respondent had the option of paying off the unmatured balance or any part thereof on July 1, 1930, or on any installment date thereafter. On March 25, 1933, respondent made the following tender to the Bank, as in full payment of his debt: cash in the amount of $1,857.50; together with respondent's stock in the Association, the par value of which ($265), added to said cash, was equal to the unpaid balance of the mortgage debt as of the next installment date. This tender was refused (R. pp. 3, 4).

Thereafter, respondent paid the sum of $1,857.50 on account of his mortgage debt, and brought suit against the

Association and the Bank in the Court of Common Pleas of Knox County, Ohio, praying for a judgment substantially as follows: (1) that the Bank be required to accept his association stock at par in full payment of its loan, and cancel its mortgage; (2) that his title to the real estate be quieted as against said mortgage; and (3) that a receiver be appointed to wind up and liquidate the affairs of the Association, which was alleged to be continuing its business notwithstanding an impairment of its capital stock. Answers were filed by both defendants, and a cross petition was filed by the Bank, praying judgment for the balance of the mortgage debt not theretofore paid in cash.

It was established that for more than two years before the trial, the Association's current assets (excluding capital) had been less than its obligations to the Bank for defaults under mortgages indorsed for its members (R. p. 57). A statement of the Association's financial condition, introduced in evidence by the respondent, showed a deficit equal to 4.04 per cent of its capital stock at the date of the trial, the Bank being the only creditor (R. p. 72, Exhibit "B").

The Association and the Bank had agreed upon a method for liquidating the Association's obligations. This agreement was made in 1931, while respondent was a member of the Association. It authorized the Bank to retain and apply to the Association's account any sums which otherwise would be payable, including dividends on bank stock owned by the Association, and the proceeds thereof on retirement (R. p. 87, Exhibit "F").* The agreement was

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* The Act requires that the Association purchase stock in the Bank in the amount of 5% of each loan obtained for a member, and pledge such stock as collateral security for the indorsed loan. The bank stock shall be paid off at par and retired upon full payment of the indorsed loan. Federal Farm Loan Act, § 7; 12 U. S. C. § 721.)

executed on a standard form approved in 1929 by the Federal Farm Loan Board (now Farm Credit Administration).

During the two year period preceding the trial, the Association had indorsed and become liable to the Bank for new loans in excess of $100,000 (R. p. 57).

The case was tried in April of 1935, but no decision was rendered until October 7 and November 18 of 1935, when the trial court entered two separate judgments (R. pp. 93, 97) disposing of different phases of the case. By the first judgment, filed October 7, the court adjudicated the amount which was owing by Phillips to the Bank, and ordered that the Bank cancel and deliver up its mortgage upon payment of said sum in cash. Both Phillips and the Bank complied with the provisions of said judgment, as appears from the preliminary recitals of a subsequent order of the court (R. p. 97), *and all controversy respecting title to the real estate was thereby concluded.*

On November 18, 1936, the court decided the remaining issues in the case, awarding judgment against the Association for the par value of Phillip's stock ($265) and appointed a receiver to liquidate and wind up the Association (R. p. 97).

Upon petition in error to the Court of Appeals of Knox County, Ohio, the judgment and decision of the Court of Common Pleas was affirmed (R. p. 107).

Specification of Errors to be Urged.

The court erred—

1. In affirming judgment against the Association for the par value of respondent's stock.

2. In holding that the Federal Farm Loan Act requires the Federal Land Bank to credit the maker of a mortgage note with the proceeds of collateral security (bank stock) owned and pledged by the indorser of the note (the na-

tional farm loan association of which the maker is a member and shareholder).

3. In affirming the appointment of a receiver to wind up and liquidate the Association's business.

4. In holding that the Ohio statutes, relative to the appointment of a receiver in an action to quiet title to real estate, were applicable to this case; and in failing to recognize that all controversy relative to title had been eliminated upon respondent's payment of the entire mortgage debt, during the interim between the filing of suit and the appointment of a receiver to liquidate the Association and that the sole remaining questions involved the interpretation of the Federal Farm Loan Act.

Reasons for Granting the Writ.

1. The court below has decided Federal questions of substance which have not been settled by this Court.

2. The rights and obligations of the parties to this case are controlled by the Federal Farm Loan Act, a statute of the United States, which has been erroneously interpreted and applied by the court below.

3. The decision below is in conflict with the rule applied by United States District Courts and Circuit Courts of Appeal, in passing upon the claims of shareholders against insolvent membership corporations such as building and loan associations. The Federal rule should have been followed in interpreting the provisions of the Federal Farm Loan Act with respect to the retirement of stock by an insolvent national farm loan association.

4. The entire Federal land bank system is concerned with the basic issues involved in this case, which may be summarized as follows:

(a) Does the relationship of debtor and creditor arise between a national farm loan association and a shareholder who seeks to withdraw his capital and retire from membership at a time when the association is insolvent?

(b) May judgment be rendered against an insolvent national farm loan association in favor of one member, for the par value of his stock, thereby according him a preference over the creditors and remaining members of the insolvent association?

(c) Does the Federal Farm Loan Act confer upon the Farm Credit Administration exclusive jurisdiction to regulate and wind up the affairs of an insolvent national farm loan association?

(d) May a national farm loan association be liquidated by a judicial receivership, merely upon the ground of insolvency, at the suit of a single shareholder? If such jurisdiction exists, does it extend to an association whose insolvency is limited to a slight impairment of capital, and whose gross assets are far in excess of the amount requisite to pay obligations to creditors?

Answers to the foregoing questions are of immediate practical importance to the land bank system. The Federal land banks hold 634,000 mortgage loans* indorsed by national farm loan associations, with unpaid balances of $2,005,000,000. In connection with each loan, the indorsing association has subscribed to capital stock in the bank (5% of the amount of the loan), and has pledged such stock as collateral security. Each borrower, in turn, has subscribed to a like amount of stock of his association, and has pledged such stock with the association as collateral security. The decision of this case involves the rights of the parties to a Federal land bank loan (borrower, association and bank) in the proceeds of these collateral pledges.

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* All statistics as of December 31, 1935.

A total of 5,034 associations are now in existence. About one third of these associations (1,649) are indorsing new loans, though presently unable to meet their obligations as indorsers of mortgages now in default, or to pay off the stock of retiring members at par. The last mentioned group of associations is operating under the same regulatory provisions which control the operations of the petitioner Association.* The total capital of this group of associations is approximately $47,995,640, all of which was subscribed under the same provisions of law as the stock involved in this case.

Conclusion.

Wherefore petitioners pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Court of Appeals of Knox County, Ohio, commanding that court to certify and forward to this Court a full and complete transcript of the record of the proceeding in said Court of Appeals had in the case numbered and entitled on its docket 380, February Term, 1936, *Arthur C. Phillips* vs. *The Knox National Farm Loan Association and the Federal Land Bank of Louisville, Defendants-Appel-*

* Petitioners will request this Court to take judicial notice of the regulatory procedure of the Government and its application to the Association, and will supplement their brief by official publications on the subject, if a writ of certiorari is issued herein. Such publications will show that, pursuant to an administrative policy which has been followed for over seven years, associations are classified on the basis of financial condition; and that associations having a slight capital impairment are permitted to continue business operations, where there is a reasonable expectation of financial rehabilitation through operating revenues, sale of acquired real estate, etc.; and that the conditions imposed upon such continuance in business constitute proper safeguards to the association's creditors and shareholders.

lants, to the end that this cause may be reviewed and determined by this Court, as provided for by the statutes of the United States, and the petitioners may have such other and further relief in the premises as the Court may deem proper.

Respectfully submitted:

THE KNOX NATIONAL FARM LOAN
ASSOCIATION AND
THE FEDERAL LAND BANK OF LOUISVILLE,
By ROGER D. BRANIGIN,
Louisville, Kentucky,
PEYTON R. EVANS,
GERALD E. LYONS,
MAY T. BIGELOW,
Washington, D. C.,
Attorneys for Petitioners.

Of Counsel:

JOHN M. RANKIN,
Columbus, Ohio.

BRIEF IN SUPPORT OF PETITION.

Reference is made to the petition for statements relative to the following matters, which will not be repeated in this brief: opinion below, jurisdiction of this Court, statement of facts, assignment of errors, and questions presented.

Statute Involved.

The questions presented by this case are controlled by the Federal Farm Loan Act (39 Stat. 360) as amended. Said Act and amendments thereto are contained in Title 12, U. S. Code, ch. 7, §§ 641 *et seq.* The provisions of law which are particularly involved in the consideration of this case are set forth in the Appendix (*Infra* pp. 14-16).

Argument.

Both petitioners are instrumentalities of the Government of the United States, performing important public duties, and operating under the supervision and regulation of the Farm Credit Administration. *Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180; *Federal Land Bank* v. *Gaines*, 290 U. S. 247; *Federal Land Bank* v. *Priddy*, 295 U. S. 229.

The association is a cooperative membership corporation which indorses and becomes liable for loans made to its members by the Federal land bank. The Act requires each member to subscribe to the association's capital, and provides that his subscription shall be paid off and retired upon full payment of his loan.

The Federal Farm Loan Act imposes the same implied restrictions upon the right to withdraw capital which have long been recognized in connection with building and loan associations. The Federal courts refuse to permit the

withdrawal of capital from a cooperative membership association unless such association is solvent. Under the rule applied by the Federal courts, it is neither requisite nor permissible for an insolvent cooperative association to retire its stock at par. *Coltrane* v. *Blake* (C. C. A. 4th), 113 F. 785, 787, 788, 792; *Kline* v. *Ariz. Mut. Sav. & L. Assn.* (C. C. A. 9th), 235 F. 694; *Aldrich* v. *Gray* (C. C. A. 6th), 147 F. 453; *Standard Sav. & L. Assn.* v. *Aldrich* (C. C. A. 6th), 163 F. 216; *Fidelity Sav. & L. Assn.* v. *Burnet* (App. D. C.), 65 F. (2d) 477, 479, 481.

The Act contemplates strict mutuality between the members of a national farm loan association, and no member may obtain a preference over his fellow members by withdrawing capital at time when the association is insolvent. *Byrne* v. *Federal Land Bank*, 61 N. D. 265, 237 N. W. 797; *Federal Land Bank* v. *Warner*, 42 Ariz. 201, 23 Pac. (2d) 563; *Western Clay National Farm Loan Association* v. *Lilly*, 189 Ark. 1004, 76 S. W. (2d) 55, See also *Toule* v. *Am. Build. L. & Inv. Soc.* (C. C.), 61 F. 446; *Sullivan* v. *Stucky* (C. C.), 86 F. 491, 493; *Lewis* v. *Clark* (C. C. A. 9th), 129 F. 570, 573; also cases cited in preceding paragraph.

A farm loan association has no power to confer upon its member the status of a creditor for the amount of his capital subscription, and any contract to that effect is unenforceable. *Kline* v. *Ariz. Mut. Sav. & L. Assn.*, (supra); *Standard Sav. & L. Assn.* v. *Aldrich* (supra); and line of cases decided by this Court on ultra vires contracts, including *McCormick* v. *Market Bank*, 165 U. S. 538, 549 and *Central Transp. Co.* v. *Pullman's Palace Car Co.*, 139 U. S. 24, 59.

The gross assets of the petitioning association greatly exceed its obligations to creditors. However, the association is insolvent, within the meaning of that term as applied to cooperative membership associations, for the reason that it cannot meet its obligations to creditors without impairment of capital. (See building and loan association cases,

supra.) Where a state of insolvency exists, the association's assets are impressed with a trust for the benefit of creditors and, under a long line of decisions by this Court, none of said assets may be distributed to shareholders.

Receivership is neither necessary nor proper, at the suit of a single shareholder, where the affairs of the cooperative association are being handled without waste or mismanagement, and particularly where there is a reasonable likelihood that the association may work out of its difficulties. *Battle, Com'r* v. *Repub. Sav. & L. Assn.*, 63 N. J. Eq. 578, 53 Atl. 11; *Sjoberg* v. *Sec. Sav. & L. Assn.*, 73 Minn. 203, 75 N. W. 1116; *Havemeyer* v. *Sup. Ct.*, 84 Cal. 327, 18 Am. St. Rep. 192; *People* v. *Union Build. & L. Assn.*, 127 Cal. 400, 58 Pac. 822, 59 Pac. 692; *Barton* v. *Enterprise L. & Build. Assn.*, 114 Ind. 226, 16 N. E. 486; 23 R. C. L. 25.

The Federal Farm Loan Act confers exclusive jurisdiction upon the Farm Credit Administration to wind up insolvent national farm loan associations. This Court has stated that under § 29 of the Act (12 U. S. C. §§ 961-964) "receivership is available only through the favorable action of the Farm Credit Administration." *Federal Land Bank* v. *Priddy*, 295 U. S. 229.

A state cannot, by legislative or judicial action, assume jurisdiction over an association which is financially embarrassed. The assertion of such jurisdiction interferes with the exercise of discretion by the Farm Credit Administration, which may give such association an opportunity to escape final insolvency, and to work out of its difficulties without receivership. *Easton* v. *Iowa*, 188 U. S. 220.

Conclusion.

The decision below is erroneous with respect to Federal questions of great importance to instrumentalities of the United States. A conflict exists between the decision below

and the rule of the Federal courts as to the rights of the retiring shareholder of an insolvent cooperative membership corporation. The petition for certiorari should, therefore, be granted.

Respectfully submitted:

ROGER D. BRANIGIN,
Louisville, Kentucky,
PEYTON R. EVANS,
GERALD E. LYONS,
MAY T. BIGELOW,
Washington, D. C.,
Attorneys for Petitioners.

Of Counsel:
JOHN M. RANKIN,
Columbus, Ohio.

APPENDIX.

Federal Farm Loan Act,* Approved July 17, 1916, 39 Stat. 360, 365.

§ 4. (12 U. S. C. § 676.) Among the powers expressly conferred upon each national farm loan association by this section is the power "to have succession until it is dissolved by Act of Congress or under the provisions of this chapter." (This section, which relates particularly to Federal land banks, is applicable to national farm loan associations. § 7, Federal Farm Loan Act; 12 U. S. C. § 716.)

§ 7. (12 U. S. C. § 721.) "Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district it shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Farm Credit Administration, to be paid off at par and retired, and *it shall be so paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued.*" (Italics added.)

§ 8. (12 U. S. C. § 733.) "* * * Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan as-

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* All quotations are from *U. S. Code*, which substitutes "Farm Credit Administration" and "administration" for "Federal Farm Loan Board" and "board", pursuant to Executive Order 6084.

sociation to an amount equal to 5 per centum of * * * the desired loan, said subscription to be paid in cash upon the granting of the loan. If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment thereof, become the owner of one share of capital stock in said loan association for each $100 of * * * his loan * * *. *Said capital stock shall be paid off at par and retired upon full payment of said loan.* Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding." (Italics added.)

§ 9. (12 U. S. C. § 744.) "Shareholders of every national farm loan loan association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of stock owned by them at the par value thereof * * *."

§ 29. (12 U. S. C. § 961.) "Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Farm Credit Administration may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: *Provided*, That no national farm loan association shall be declared insolvent by said administration until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. Such receiver, under the direction of the Farm Credit Administration, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Farm Credit Administration, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such

terms as the Farm Credit Administration or said court shall direct."

§ 29. (12 U. S. C. § 962.) "Such receiver shall pay over all money so collected to the Treasurer of the United States subject to the order of the Farm Credit Administration, and also make report to said administration of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received."

§ 29. (12 U. S. C. § 964.) "If any national farm loan association shall be declared insolvent and a receiver shall be appointed therefor by the Farm Credit Administration, the stock held by it in the Federal land bank of its district shall be canceled without impairment of its liability and all payments on such stock, with accrued dividends, if any, since the date of the last dividend shall be first applied to all debts of the insolvent farm loan association to the Federal land bank and the balance, if any, shall be paid to the receiver of said farm loan association: *Provided*, That in estimating said debts contingent liabilities incurred by national farm loan associations under the provisions of this chapter on account of default of principal or interest of indorsed mortgages shall be estimated and included as a debt, and said contingent liabilities shall be determined by agreement between the receiver and the Federal land bank of the district, subject to the approval of the Farm Credit Administration, and if said receiver and said land bank cannot agree, then by the decision of the Land Bank Commissioner, and the amount thus ascertained shall be deducted in accordance with the provisions of this section from the amount otherwise due said national farm loan association for said canceled stock."

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SUPREME COURT OF THE UNITED STATES

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Petitioners,

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Respondent.

BRIEF ON BEHALF OF PETITIONERS.

ROGER D. BRANIGIN,
Louisville, Kentucky;
PEYTON R. EVANS,
GERALD E. LYONS,
MAY T. BIGELOW,
Washington, D. C.,
Attorneys for Petitioners.

Of Counsel:
JOHN M. RANKIN,
Columbus, Ohio.

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as the Federal Farm Loan Act (12 U. S. C., Ch. 7, §§ 641, *et seq.*).[1]

The decision of the Court of Appeals of Knox County, Ohio, is a final judgment reviewable by this Court. Said Court of Appeals is the highest court of said State having jurisdiction over this case, except upon the discretionary assumption of jurisdiction by the Supreme Court of Ohio, the court of last resort of said State.[2] Said decision and judgment became final June 24, 1936, when the Supreme Court of Ohio overruled petitioners' motion for an order directing said Court of Appeals to certify its record to said Supreme Court. (R. p. 115.)[3]

III. Statement of Facts.

The Knox National Farm Loan Association (referred to in this brief as the Association) is a cooperative membership corporation, chartered by the Federal Farm Loan Board, as part of a nation-wide farm loan system. (12 U. S. C. §§ 711-722.) The Association was organized for the purpose of enabling its members to obtain loans from the Federal Land Bank of Louisville, on the security of qualified farm mortgages indorsed by the Association. The capital stock of the Association is owned entirely by members, and membership is confined to borrowers from the Bank. (R. p. 7; 12 U. S. C. § 733.)

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[1] For the convenience of the Court, petitioners have filed with the Clerk copies of a compilation of the Federal Farm Loan Act and other laws relative to Federal agencies for farm mortgage credit. This compilation, published by the Farm Credit Administration, sets forth the several statutes, as amended, in accordance with the codification thereof in Title 12 of the United States Code.

[2] Constitution of Ohio, Article IV, §6. "* * * judgments of the courts of appeal shall be final in all cases except * * * cases of public or great general interest in which the Supreme Court may direct any court of appeals to certify its record to that court."

[3] *American Railway Express Co.* v. *Levee*, 263 U. S. 19, 20.

The Federal Land Bank of Louisville (referred to in this brief as the Bank) is one of twelve Federal land banks chartered by the Federal Farm Loan Board under the provisions of said Act. (12 U. S. C. §§ 671-683.) The Bank has its principal place of business in the City of Louisville, State of Kentucky, and is authorized by its charter to do business in the States of Ohio, Indiana, Kentucky and Tennessee. (R. p. 7.)

This case grows out of transactions relating to a loan which was made through the Association some years ago. The various incidents to making and carrying such loans are prescribed, in great detail, by the Federal Farm Loan Act. For that reason, the transactions leading up to the present suit are tabulated in the appendix to this brief, opposite quotations from the applicable provisions of the Act. (Appendix, p. 91, *et seq. infra.*) A brief outline of the essential facts is set forth in the following paragraphs.

In 1927, Respondent purchased a farm in Knox County, Ohio, and assumed a mortgage which had been given by his vendor to the Bank to secure a loan obtained through the Association. At the same time, Respondent assumed the stock interests of his vendor (53 shares of paid-up stock in the Association, with a par value of $5 each), and became a member of the Association, as permitted by 12 U. S. C. § 771, Sixth (R. p. 47). Respondent's stock was held by the Association as collateral security for the payment of said loan, pursuant to the requirement of 12 U. S. C. §§ 721, 733. The Association's receipt for such stock stated, in part, that Respondent's stock in the Association "will be accepted at face value upon final payment of the loan." No provision of this character was contained in the Act or in the note and mortgage held by the Bank. (R. pp. 29, *et seq.*)

The mortgage loan was payable in installments over a period of 34½ years, but Respondent had the option of pay-

ing off the unmatured balance or any part thereof on July 1, 1930, or on any installment date thereafter, subject to the regulations of the Farm Credit Administration. (12 U. S. C. § 771, Second.)

On March 25, 1933, Respondent made the following tender to the Bank, as in full payment of his debt: cash in the amount of $1,857.50; together with Respondent's stock in the Association, the par value of which ($265), added to said cash, was equal to the unpaid balance of the mortgage debt as of the next installment date. This tender was refused. (R. pp. 3, 4.)

Thereafter, Respondent paid the sum of $1,857.50 on account of his mortgage debt, leaving an unpaid balance of $265. He made repeated demands on the Bank and the Association that his stock be accepted in settlement of said balance.

At the time of said tender and payment, and at all times since, the Association was indebted to the Bank for amounts which it could not meet from current assets, and had no funds available for distribution to stockholders. (R. p. 55.)

IV. Proceedings in the Courts Below.

Respondent brought this suit against the Bank and the Association in the Court of Common Pleas of Knox County, Ohio. Respondent's petition stated, in substance, the facts outlined in the preceding section of this brief. The petition alleged, in substance, that Respondent had made a legal tender of the full amount of the mortgage debt, by offering the Bank his receipt for stock in the National Farm Loan Association (par value $265) together with cash for the remainder of the unpaid balance.

Although Respondent's petition is somewhat obscure, it may fairly be construed in the light of his position throughout the case, as alleging: (1) that the Association had exe-

cuted a valid agreement to accept his stock at face value on final payment of the loan, such agreement being contained in the Receipt for Stock; (2) that the Federal Farm Loan Act requires that the stock be so accepted; and (3) that the Act requires the Bank to credit Respondent's loan with the par value of his stock in the Association, when the loan has been paid down to that amount.

Respondent further alleged in his petition that the Association's capital was impaired, and that it was continuing operations at the risk of further losses and further impairment of its capital stock, to the detriment of his interests as a shareholder (R. p. 4).

Respondent prayed for the following relief (R. p. 5):

1. That the Bank be required to pay off at par and retire the shares of stock issued to him by the Association.

2. That the Bank be required to surrender the promissory note and mortgage, duly canceled, and that Respondent's title to the real estate be quieted as against said mortgage.

3. That a receiver be appointed to take charge of the business and property of the Association, and to wind up and liquidate its affairs.

Separate answers were filed by the Association and by the Bank. The Bank also filed a cross petition, alleging that the mortgage debt had been reduced to approximately $265 by a cash payment made in April of 1933, that Respondent had subsequently failed and refused to make further payments on account of said mortgage debt as they matured, and that he was in default. The Bank prayed judgment for the full unpaid balance and for a foreclosure of its mortgage for the satisfaction of such judgment (R. p. 29, *et seq.*).

The case came on for trial in April of 1935. At the hearing, the facts previously outlined were established. The financial condition of the Association, as of the date of the

trial, was shown by a statement which Respondent's attorney introduced in evidence. (R. pp. 55, 72, 73.)

This financial statement shows that the Association has 179 members; for whom it has endorsed loans in the total original amount of $493,200. The Association's capital (invested in capital stock of the Federal land bank) is $24,660. The Association's only creditor is the Federal Land Bank. The Association's account with the Bank shows a debit balance of $997.60—the difference between the Association's liability for losses sustained upon the foreclosure of two indorsed mortgages, and the current assets which are available for the payment thereof. This deficiency of current assets is 4.04 per cent of the Association's capital. The Association has a further potential impairment of capital (estimated at $3,563.61) which may or may not develop upon the liquidation of real estate securing certain indorsed loans which have gone to foreclosure.

It was further established at the hearing that, during the two-year period since Respondent had made his original tender, the Association had indorsed and become liable for the payment of new loans aggregating more than $100,000; and that during the entire period, its capital had been impaired. (R. p. 57.)

Upon conclusion of the testimony, the case was taken under advisement by the trial judge, and no further proceedings were had for several months.

On October 7, 1935, the trial court entered the first of two judgments, disposing of one phase of the case. The court found that Respondent was still indebted to the bank for the balance of his mortgage debt over and above the cash payment made in 1933, and ordered that the Bank cancel and deliver up the note and mortgage, within fifteen days after receipt of said sum ($265). The order further provided that, if the Bank should fail to comply, it should stand as a

decree quieting Respondent's title as against the lien of the mortgage. (R. p. 93.) Immediately thereafter, Respondent paid the sum of $265, and the Bank surrendered its note and mortgage, duly canceled.

On November 18, 1935, a second order was entered by the trial court. (R. p. 97.) The court found that Respondent had fully paid his entire debt to the Bank, and therefore was entitled to the retirment and repayment of his shares of stock in the Association. The court entered judgment against the Association for $265, the par value of said stock, with interest thereon from the date of the judgment at 6 per cent per annum. (R. p. 98.)

The court further found that the Association had been insolvent for more than two and one-half years prior to the date of the decree; that during such period the Association had made itself contingently liable for new loans aggregating more than $100,000; and that Respondent had been obliged to continue as a stockholder against his will and desire, long after he had "tendered to the defendants [Bank and Association] * * * the full amount due upon the debt * * *, and made demand and request upon the defendants for the retirement and repayment to him at par value of his said 53 shares of the capital stock of said defendant * * * association."

Upon the facts so found, the court decreed that Respondent was entitled to the liquidation of the affairs of the Association. A receiver was appointed and ordered to take possession of any and all property of the Association, and to use, manage and conduct the business of the Association in accordance with his best judgment and discretion, and to deposit any funds that may come into his hands in The Knox National Bank in Mt. Vernon. The court ordered the officers of the Association and all other persons to deliver up to the receiver any property belonging to the Association of any

kind or description, and restrained all persons from interfering in any manner with the receiver.

The Association and the Bank appealed to the Court of Appeals of Knox County, Ohio, from the judgment entered November 18, 1935. By a judgment entered April 16, 1936, the Court of Appeals affirmed the judgment of the trial court, and remanded the cause for further proceedings. In connection with its judgment, the Court of Appeals handed down an opinion which contained substantially the following rulings of law:

> The Federal Farm Loan Act requires a national farm loan association, whether solvent or insolvent, to pay off at par the capital stock owned by a member, immediately upon the repayment of his loan. (R. p. 109).
>
> Under the plain terms of the Act, a member who has fully paid his indorsed loan is entitled to judgment against the association for the par value of his capital stock, regardless of the solvency or insolvency of the association. (R. p. 111.)
>
> The Act requires a Federal land bank to credit its borrower's mortgage debt with the par value of collateral (capital stock in said bank) owned and pledged by the indorsing national farm loan association. The borrower is entitled to such credit when he has paid his loan down to an amount equal to the par value of the collateral pledge. (R. pp. 109, 110.)
>
> When a national farm loan association issues a receipt to its member for the shares of its capital stock which are purchased and pledged with it as collateral security for the payment of an indorsed loan, and states in such receipt that the stock will be accepted at par upon final payment of said loan, such receipt constitutes a valid and unconditional contract to redeem said stock at par, and may be enforced regardless of the association's solvency or insolvency. (R. p. 111.)
>
> Where an association fails to pay off at par the capital stock of a member who has retired his loan, such member is both a creditor and stockholder. He is en-

titled to demand that the association be liquidated and wound up by a state court, if it is continuing to indorse new loans while its capital is impaired. (R. pp. 109, 111.)

The Federal Farm Loan Act does not confer exclusive jurisdiction upon the Farm Credit Administration to liquidate and wind up an insolvent national farm loan association. (R. p. 112.)

The Bank and the Association filed a motion in the Supreme Court of Ohio for an order directing the Court of Appeals of Knox County to certify its record to the Supreme Court. This motion was overruled on June 24, 1936, whereupon the decision of the Court of Appeals became final.

V. Proceedings in This Court.

On September 23, 1936, the Bank and the Association applied to this Court for a writ of certiorari, to review the decision of the court below, upon a specification of errors identical with the assignments set forth below. A writ of certiorari was granted by this Court on November 9, 1936.

VI. Assignments of Error.

The court erred—

1. In affirming judgment against the Association for the par value of Respondent's stock.

2. In holding that the Federal Farm Loan Act requires the Federal Land Bank to credit the maker of a mortgage note with the proceeds of collateral security (bank stock) owned and pledged by the indorser of the note (the national farm loan association of which the maker is a member and shareholder).

3. In affirming the appointment of a receiver to wind up and liquidate the Association's business.

4. In holding that the Ohio statutes, relative to the appointment of a receiver in an action to quiet title to real estate were applicable to this case; and in failing to recognize that all controversy relative to title had been eliminated upon respondent's payment of the entire mortgage debt, during the interim between the filing of suit and the appointment of a receiver to liquidate the Association, and that the sole remaining questions involved the interpretation of the Federal Farm Loan Act.

VII. Summary of Argument.

1. A national farm loan association is a cooperative membership corporation, organized for the purpose of obtaining loans for its members, upon its indorsement, from the Federal Land Bank of its district. It is an integral part of the Federal Farm Loan System. Its members may not evade their responsibility by withdrawing when the association is insolvent.

2. The Farm Loan Act contemplates a solvent association in providing for retirement of the stock of withdrawing members.

3. The Association did not agree to confer upon Respondent the status of creditor for the amount of his capital subscription, and any contract purporting to confer such status would have been ultra vires and unenforceable.

4. The Farm Loan Act does not require a Federal Land Bank to credit the maker of a mortgage note with the proceeds of collateral security owned and pledged by the indorser of the note.

5. A national farm loan association is an instrumentality of the United States, and jurisdiction to wind up such association upon insolvency is vested exclusively in the Farm Credit Administration.

6. The Farm Credit Administration has discretionary authority to appoint or not to appoint a receiver for an insolvent national farm loan association; and to permit an association to continue business operations, notwithstanding an impairment of capital stock which appears to be temporary, provided the rights of stockholders and creditors are adequately protected.

VIII. ARGUMENT.

1. A national farm loan association is a cooperative membership corporation, organized for the purpose of obtaining loans for its members, upon its indorsement, from the Federal land bank of its district. It is an integral part of the Federal Farm Loan System. This relationship is meaningless if Respondent can evade his responsibility by withdrawing when the Association is insolvent.

In previous cases this Court has examined the provisions of the Federal Farm Loan Act respecting national farm loan associations, and has described the functions of these associations as integral parts of the Federal land bank system. In *Smith* v. *Kansas City Title and Trust Co.*, 255 U. S. 180, 203, the Court reviewed, in considerable detail, the statutory procedure for making loans through national farm loan associations,[4] and stated:

> "Loans [by Federal land banks] on farm mortgages are to be made to *cooperative borrowers* through the organization of corporations known as National Farm Loan Associations, * * *." (Italics added.)
>
> "No persons but borrowers on farm loan mortgages shall be members or shareholders of National Farm Loan Associations."
>
> "Shareholders in Farm Loan Associations are made individually responsible for the debts of the Associa-

[4] The procedure described in the Smith case was followed in the present case. Each step in that procedure is shown in the appendix to this brief, pages 91, et seq.

> tion to the extent of the amount of stock owned by them respectively, in addition to the amount paid in and represented by their shares."

In *Federal Land Bank* v. *Gaines*, 290 U. S. 247, this Court again reviewed the provisions of the Act for loans through national farm loan associations. And again, the Court referred to the cooperative features of the Act, stating:

> "The borrower is under no legal compulsion to borrow. If he takes the benefit of the privilege extended by the statute he can do so only in compliance with its requirement that he shall join, with himself as obligor, the local cooperative association of which he is a member."

The legislative history of the Act, as this Court recognized in the *Gaines* case (*supra*), expressly confirms the apparent intention of Congress to establish a cooperative banking system. In submitting the first draft of the measure which became the Federal Farm Loan Act, a joint Committee of the Senate and House of Representatives stated (*H. R., Doc. No. 491, 64th Congress, 1st Session*):

> "In order to secure intimate touch with the borrowers, it is provided that the land bank shall make loans to farmers through local associations of borrowers, called national farm loan associations. These associations do not conduct a banking business. Their operations are very simple. They admit members who desire to borrow; their directors and loan committees pass on the value of the security and the character of the borrower. Every borrower takes stock in the farm loan association to the amount of 5 per cent of the face of his loan. This amount is subscribed by the association to the stock of the land bank, thus providing for a capital proportionate to the amount of loans, approximating 1 to 20." (P. 8.)

"* * * the special capabilities of the land-bank managers must be supplemented by an intimate knowledge of the borrower and his affairs, particularly of the farm land he offers as security. This supplementary knowledge is furnished without additional cost through the local associations." (P. 12.)

"*At the outset we secure the personal interest of the borrower by requiring him to contribute to the capital of the loan association 5 per cent of the face of his loan. This personal stake makes the system mutual and makes the borrower a cooperator.* * * * *He knows that if the association recommends and indorses a bad loan, he may be called on to help make the loan good.* (Italics added.) (P. 13.)

"We should thus expect every member to keep careful watch lest his loan association make unsafe loans, with resulting personal loss to him. We should also expect him to see that the best available men in the community act as directors and as members of the loan committee." (P. 13.)

"Our country lags far behind Europe in most matters of cooperation among farmers. There are conditions which render it more difficult here than in older countries. But so far as cooperation is applicable, and as speedily as we can adapt it to our own conditions, it should be established. (P. 17.)

"The framers of this bill realize that it is but one factor in the vast field for national cooperation that lies before the American farmer. But they entertain the hope that organization for the purpose of securing land mortgage credit will bring neighboring farmers into closer touch all over the Union and will stimulate the cooperative spirit. Those men who organize farm loan associations will become better acquainted and more trustful of each other, so that it will be comparaitvely easy to form organizations among the land mortgage groups for * * * various forms of cooperative activity." (P. 17.)

The Senate Committee on Banking and Currency, in recommending the passage of the measure, adopted as its own the foregoing statements of the Joint Committee respecting the cooperative features of the Federal land bank system. (*Sen. Rep. No. 144, 64th Congress, 1st Session.*).

Similarly, the report of the House Committee on Banking and Currency (*H. R., Rep. No. 630, 64th Congress, 1st Session*) states:

> "* * * the national farm-loan associations and the Federal farm-land banks constitute a system of rural credit essentially cooperative. Every borrower through a farm-loan association must be a stockholder in that association to the extent of 5 per cent of his loan. * * *
>
> "Except for the stock held by borrowers through agents, the entire stock of the land banks will ultimately be held by the various national farm-loan associations.
>
> "The management and administration of the associations is entirely in the hands of the borrowers." (P. 8.)
>
> "All dividends from the earnings of the system are paid to the borrowers themselves as stockholders.
>
> "Opportunity therefore is afforded the farmers of the country to organize a cooperative system whereby an abundant volume of credit is available through the sale of farm-loan bonds. **The attractiveness of these bonds should assure their sale at a low interest rate.** This low interest rate plus the necessary moderate charges for expense of administration and reserves represent exactly the rate at which the farmer can borrow through this cooperative system." (P. 8.)
>
> "In the case of the Federal land banks the profits earned by the banks after expenses and charges have been deducted go to the associations in the form of dividends, and subsequently are paid to the borrowers themselves as stockholders in the associations." (P. 10.)

The Federal Farm Loan Act has now been in force for twenty years, and although it has been repeatedly amended, its cooperative features have been preserved and strengthened. The cooperative Federal land banks are the only permanent banking institutions now authorized to make long-term farm mortgage loans under Government supervision—the privately owned joint stock land banks being prohibited from making new loans (12 U. S. C. § 810).

By the Act of March 4, 1933 (12 U. S. C. § 723), Congress amended the Federal Farm Loan Act to permit the making of direct loans by Federal land banks, in localities where facilities of national farm loan associations are not available. The only cooperative feature of direct loans is the requirement that borrowers subscribe to stock in the Federal land bank in the amount of 5 per cent of their loans. Such loans must bear interest greater than that charged to borrowers through associations. (12 U. S. C. § 723.) Thus, it is apparent that Congress has favored and encouraged cooperative borrowing through national farm loan associations, as opposed to direct borrowing from a Federal land bank.

The legislative preference for cooperative borrowing was further shown by the fact that direct borrowers have the statutory privilege of covenanting, in their mortgages, to form a national farm loan association. (12 U. S. C. § 723.) It is a matter of public record that in administering this provision of the statute, the Farm Credit Administration has required that all mortgages executed by direct borrowers shall contain a covenant of this character; also that the covenant has been regarded as an option in favor of the borrower, rather than a condition enforceable by the Bank. It is also a matter of public record that many thousand direct borrowers have voluntarily joined associations, when such action became possible, thereby obtaining reduced interest rates.

As this Court said in the *Smith* case (*supra*), the members of an association are "cooperative borrowers." They cooperate in furnishing capital to the bank which they patronize. (12 U. S. C. § 721.) They cooperate in scrutinizing the security which is tendered for new loans, and in passing upon the character and credit standing of applicants. (12 U. S. C. § 752.) They cooperate in indorsing and becoming liable for loans made to fellow-members. (12 U. S. C. § 761, First.) They cooperate in seeing that loan funds are used for the purposes stated by applicants; in collecting and forwarding amounts which are payable on indorsed loans; and in ascertaining the amount of any delinquent taxes on land mortgaged as security for indorsed loans. (12 U. S. C. § 714.) They cooperate in making good defaults under indorsed mortgages, and in becoming personally liable, equally and ratably, for all contracts, debts and engagements of their association, to the extent provided by the Act. (12 U. S. C. § 921.)

Thus, the cooperative borrowers who constitute a national farm loan association have active duties to perform in connection with each loan cooperatively obtained, from the moment application is made for such loan until final payment thereof. *Each cooperator has obligations separate and distinct from his own mortgage debt—obligations which cannot be evaded by withdrawing from membership at a time when the association is insolvent.*

2. The Farm Loan Act contemplates a solvent association in providing for retirement of the stock of withdrawing members.

The courts below have held that the Act (12 U. S. C. § 732) requires an association to pay off its stock at par, whether solvent or insolvent. Petitioners believe that this ruling is plainly erroneous, and that in providing for the retirement of stock, the Act contemplates a solvent associa-

tion. Petitioners' position in this regard has been sustained by the highest courts of two states, in the cases quoted below.

In *Byrne* v. *Federal Land Bank*, 61 N. D. 265, 237 N. W. 797, 802, 803, a borrower whose loan had been paid in full brought suit against the Federal land bank and the national farm loan association, to recover the par value of his shares of stock in the association. At the time the loan was paid off, the association was insolvent. In holding that the borrower had no cause of action against the insolvent association, the Supreme Court of North Dakota stated:

> "It is true the act says upon payment of his loan 'the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when such land bank stock was issued' (12 U. S. C. § 721). The plaintiff however is a stockholder in a corporation. *The corporation cannot pay off at par the stock held by the plaintiff if it be insolvent, or if it has no money.*" (Italics added.)
>
> "*While the statute requires the retiring of the shares at par, it contemplates a solvent institution. The plaintiff, by merely paying his loan, cannot escape the responsibility which he assumes as a stockholder. The relationship which he bears to the other shareholders and to the whole system is such that he cannot evade responsibility.* • • • The payment of the loan does not relieve the borrower from his liability as a stockholder. The only assets which a Farm Loan Association has or can have are the shares which it takes in the Federal Land Bank to counterbalance the shares of stock in the association taken by the borrower, such dividends as the shares of stock in the land bank taken by the association may earn, and such 'reasonable initial charges to be made against applicants for loans and to borrowers in order to meet the necessary expenses of the association' as specified in • • • the

act * * *. The statute contemplates that when the loan is paid the stock shall be canceled, and the necessary corollary of this is that the par value of the stock be returned; but it is evident from the statute that Congress had in mind the possibility that such Farm Loan Association may become insolvent." (Italics added.)

"* * * the principle involved in the act is co-operative in its nature. It is only through the co-operation of his neighbors, with their assistance, upon their recommendation and the pledge of their liabilities he can secure his loan. They pledge their faith and credit to aid him, and he pledges his faith and credit to aid them. Having secured their co-operation and assistance and finding his loan paid, he now wants to avoid his responsibilities to those who made it possible for him to get his loan. His rights are not superior to the rights of any other stockholder in the corporation. We have already shown that a solvent corporation cannot declare and pay dividends out of its capital stock so as to render itself insolvent, * * * and if a solvent corporation cannot do this, how may an insolvent corporation pay one stockholder for his stock? The plaintiff is co-operative when he desires a loan and needs the assistance of his neighbors; but becomes extremely individualistic when the loan is paid."

"The record showing the loan association to be insolvent, with no funds to pay its debts, let alone to retire its stock, one shareholder has no right to increase the indebtedness of the others by securing payment for his stock. If he avoid his responsibilities, the burden of debt resting upon those who assisted him is increased. Plaintiff has no cause of action against the association." (Italics added.)

The same conclusion was reached by the Supreme Court of Arkansas in *Western Clay National Farm Loan Association* v. *Lilly*, 189 Ark. 1004, 76 S. W. (2d) 55. The Arkan-

sas court quoted at length from the *Byrne* case (*supra*), in support of the conclusion that a borrower has no right of action against an insolvent national farm loan association, for the par value of stock issued in connection with a loan which has been retired. In its opinion the court stated:

> "If a borrower be permitted to pay off his loan and withdraw his capital stock at par value in an insolvent association, there is no co-operation left.
>
> "Manifestly co-operation is the ground work of the original act. * * * each borrower in a local association to the extent of his stock * * * is surety for the loans of all other members and borrowers in such local association, *and this liability continues until the loan is paid off and retired during the solvency of such local association.*" (Italics added.)
>
> "Clearly it appears that * * * when appellee retired her loan in the Federal Land Bank * * *, the Western Clay National Farm Loan Association had defaulted in its obligations to the Federal Land Bank, and had been in such default for more than two years prior thereto. *This was a state of insolvency on the part of the local association, and the mere fact that no receivership was procured thereon in no wise alters the situation under consideration. We know of no rule of law, and have been cited none by counsel, which permits a stockholder in an insolvent corporation to withdraw his capital investment at par.*" (Italics added.)

Thus, in both cases where the question has been raised before superior courts, it has been held that the Farm Loan Act contemplates a solvent association, in providing that capital stock shall be paid off at par and retired, when a member has fully repaid the loan which he obtained through the association. This conclusion accords with the prevailing rule respecting the rights of shareholders in building and loan associations—corporations which are strikingly similar, in many respects, to national farm loan associations.

In a line of cases decided before the passage of the Farm Loan Act, the Federal courts had held that the insolvency of a cooperative association suspends the right of its members to withdraw their capital. It must be presumed that, in providing for the withdrawal of capital from national farm loan associations, Congress legislated with knowledge of the rule which the Federal courts had applied to insolvent mutual associations. It must also be presumed that, since national farm loan associations were not expressly excepted from the established rule of the Federal courts in such matters, Congress intended the rule to apply. The cases referred to in this paragraph are discussed below.

An early Federal case, frequently cited in texts and opinions, is *Towle* v. *Am. Bldg. L. & Inv. Soc.* (C. C. Ill.), 61 F. 446. In referring to building and loan associations the court stated:

> "These associations are essentially corporate copartnerships."
>
> "Their officers are the agents of every stockholder."
>
> "The insolvency of such an institution is sui generis. * * * The association is said to be insolvent when it cannot pay back to its stockholders the amount of their actual contributions, dollar for dollar", and in the event of insolvency, borrowing members may not receive credit on their loans, for amounts paid toward stock.

In *Sullivan* v. *Stucky* (C. C. Ind.), 86 F. 491, 493, the court applied the same rule which was announced in the Towle case (*supra*), and held that upon the insolvency of a building and loan association, the borrowing shareholders must pay the full amount owing on their loans. The court pointed out that the application of all payments made by borrowing shareholders to their loan accounts would throw "all the loss on the nonborrowing shareholder, and for that reason

it is unjust and inequitable. Both classes of shareholders ought equally and impartially to bear the burdens arising from the unexpected misfortunes of the enterprise."

A leading case on the subject of insolvent building and loan associations, and the rights of shareholders therein, is *Coltrane* v. *Blake*, (C. C. A. 4th), 113 F. 785. The court reaffirmed the rule of the *Towle* and *Sullivan* cases (*supra*), stating that under "the general law of contracts"—"the law merchant," the insolvency of an association does not release the shareholder from his liability for the full amount of his stock subscription; and that a borrowing shareholder is not entitled to credit on his loan for amounts paid on stock. In its opinion the court stated:

> "A corporation of this character is in one aspect a limited co-partnership. Each stockholder ventures a certain sum of money, the amount of stock subscribed by him."
>
> "Each stockholder stands on the same footing with regard to each share of his stock, and each is liable equally and in the same respect with every other for his subscription, according to the form in which he contracts to pay it * * *."
>
> "All the money so paid under these contracts of [stock] subscription went into the common treasury, in which every stockholder had an interest. This transaction is * * * not dependent for its legality on any local law. It comes within the general law of contracts. If any one, being a stockholder * * * concludes to get from the common treasury money in it, and gets it, * * * it has all the characteristics of a debt for which * * * he is responsible. He hopes to pay this perhaps by the maturity of his stock * * *. The insolvency of the company defeats this hope * * *. But this, of itself, cannot release him from his contract, or free him from his responsibility as a stockholder, or cancel his stock. *The disappointment which he suffers is common with every stockholder in the association. Every stockholder*

> ** * * has paid his subscription, * * * expecting profit at the maturity of the stock in the hoped-for time. The money of each of them has gone into the common fund * * *."* (Italics added.)

In *Aldrich* v. *Gray* (C. C. A. 6th), 147 F. 453, 456, it was held that the receiver of a building and loan association may recover sums paid by the association, during insolvency, to a withdrawing shareholder. In its opinion the court stated:

> *"The current of decisions in this country in regard to this subject seems to be that, when insolvency supervenes in the status of such associations, the right of withdrawal which before existed is suspended, in the absence of some express provision to the contrary. This is the result of the mutuality of the stockholders and the equity of equality, which is of the essence of their relation to each other.* If it were otherwise, and the stockholders could at will successively take their investment out and desert the failing enterprise, those remaining would have to bear the brunt of the joint misfortune." (Italics added.)

See also *Standard Sav. & L. Ass'n* v. *Aldrich* (C.C.A. 6th), 163 F. 216; *Kline* v. *Ariz. Mutual Sav. & L. Ass'n* (C.C.A. 9th), 235 F. 694; *Miles* v. *New South Bldg. & L. Ass'n.* (C.C., La.), 111 F. 946.

In a more recent series of cases, the Federal courts have considered whether withdrawing shareholders of building and loan associations are creditors, within the meaning of the Bankruptcy Act. (Prior to the amendment of February 11, 1932, building and loan associations were subject to involuntary bankruptcy proceedings.) In most of these cases, the courts held that withdrawing shareholders are not creditors, and are not entitled to institute bankruptcy proceedings against the associations.[5] A recent decision of

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[5] *Curtis* v. *Dade Co. Security Co.* (C. C. A. 5th) 30 F. (2d) 325; *In re Guardian Bldg. & L. Ass'n* (D. C. Or.), 53 F. (2d) 412; *In re Puget Sound Sav. & L. Ass'n* (D. C. Wash.), 49 F. (2d) 922.

the Court of Appeals of the District of Columbia in *Fidelity Sav. & L. Ass'n.* v. *Burnet*, 65 F. (2d) 477, 479, 481, throws considerable light upon an apparent conflict respecting this question, between United States Courts in California[6] and in the other districts. The decision, handed down in a tax case, shows that even under the law of California, the shareholder is a creditor only in a very limited sense, and that his claim against the association cannot be enforced until the claims of general creditors have been met. In the course of its opinion the District of Columbia court stated:

> "Speaking generally, building associations are either the 'mutual' or the 'guaranty stock' type. *In case of the former, the basic characteristic is that the association is conducted on the co-operative plan with mutual advantages and benefits to its members who share alike in the profits and losses.* * * * In the case of a mutual association * * * all classes of stockholders vote at stockholders' meetings, share in the earnings, are eligible to office in the corporation, and, *in the event of the insolvency of the corporation and the winding up of its affairs, are entitled only to share in the residue of the assets after the payment of debts.*" (Italics added.)

The stockholder who was before the court "*had, it is true, the advantages of withdrawal which the holder of permanent stock did not have, but this advantage accrued only during the solvency of the corporation.* * * * *had the company become insolvent, he could neither have set off the amount of his subscriptions against his indebtedness to the company nor could he have shared in the assets on an equality with creditors.*

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[6] *Merchants' Nat'l Bank* v. *Continental Bldg. & L. Ass'n* (C. C. A. 9th), 232 F. 828; *In re Western States Bldg.-Loan Ass'n* (D. C. Calif.), 50 F. (2d) 632. In each of those cases, the court held that under the law of California, as previously interpreted by the courts of that State, the holders of "pass-book stock" become creditors (of a subordinate rank) when a building and loan association fails to pay off their stock upon demand.

> His position, though still superior to that of the permanent stockholder, was subordinate to that of the creditor, and therefor until insolvency the character of stockholder continued to exist and the rights of creditor, which in a case of insolvency may be said to arise, applied only to the assets remaining after the payment of the claims of the creditors generally." (Italics added.)

The rule of the Federal courts, with respect to the rights of shareholders upon the insolvency of a mutual association, is the rule of most American jurisdictions, and has met with the approval of text writers. It has repeatedly been held that a member may not withdraw his capital unless the association has a fund with which to pay him; and that until such fund accrues, the shareholder has no right of action against the association. The authorities fully support the following statement in 4 R. C. L. 354:

> "It is obvious that a withdrawing stockholder cannot properly be regarded as having the rights of the ordinary creditor, for if that were so, he might get judgment, issue an execution, acquire a lien upon real estate, and subject the personalty of the Association to the prejudice of other creditors. *He can maintain no suit to recover the withdrawal value of his stock until a fund for its payment has been provided, for until that event has happened, he has no right of action.*" (Italics added.)

The above quoted language is used in *Andrews* v. *Roanoke Bldg. Ass'n. and Inv. Co.*, 98 Va. 445, 36 S. E. 531.

A leading case on insolvent mutual associations is *Heinbokel* v. *National Sav., L. & Bldg. Ass'n.*, 58 Minn. 340, 59 N. W. 1050, where it is said to be obvious that a withdrawing shareholder cannot be regarded as having the rights of an ordinary creditor. In that connection the court stated:

> "It must be remembered that if, upon refusal to pay, because not in funds, a suit may be brought at once,

and prosecuted to judgment, *even if further proceedings could be stayed by the court, such judgment would, as soon as docketed, become a lien upon all real estate, having priority even over a later judgment obtained by a general creditor. In this way a withdrawing member could not only secure superior rights as against the other members, but also over a creditor whose judgment was based upon an independent claim.* In addition to this, the association would be seriously crippled and embarrassed, for no sale of its real property could be made so long as the lien remained. * * * It follows that there must be proper allegations in the complaint and proof upon trial as to the existence of funds out of which payment can properly be made." (Italics added.)

For other authorities sustaining the proposition that the right of withdrawal from a mutual association may be exercised only while the association is a going concern, see: *Endlich on Building Associations; Christian's Appeal*, 102 Pa. 184; *Hale* v. *Cairns*, 8 N. D. 145, 77 N. W. 1010; *Clarke* v. *Olson*, 9 N. D. 364, 83 N. W. 519; *Groover* v. *Pacific Coast Savings Society*, 164 Calif. 67, 127 Pac. 495.

These, and many other cases too numerous to cite, support the observation in *Colin* v. *Wellford*, 102 Va. 581, 46 S. E. 780, 782, that:

"It seems, indeed, to be the accepted American doctrine that, when an association is in fact insolvent, a withdrawing member has only the right to a pro rata share in the distribution of its assets. * * * *The authorities * * * establish the principle that, when insolvency exists as a fact, the right of the shareholders to equality in the distribution of the assets attaches, and constitutes a paramount equity in their favor.*" (Italics added.)

We earnestly submit that the American rule respecting the rights of a withdrawing shareholder upon the insolvency of a cooperative association is applicable to this case.

Under that rule, Respondent never became a creditor of the Knox Association for the par value of his stock. He never had a right of action against the Association, and his rights as a stockholder are limited to a ratable share in the net assets of the Association after its debts have been met.

The courts below erred in entertaining Respondent's suit for the par value of his stock. In granting judgment to Respondent, the courts below ignored the principles of equality and mutuality which must control his relationship to the other shareholders of the Knox Association, and ignored the superior rights of the Association's creditor, the Federal land bank.

3. The Farm Loan Act does not require a Federal land bank to credit the maker of a mortgage note with the proceeds of collateral security owned and pledged by the indorser of the note.

The Act provides (12 U.S.C., § 721) that when a national farm loan association desires to obtain a loan for any member from the Federal land bank, it shall subscribe for capital stock of the bank to the amount of 5 per cent of the loan, such subscription to be paid in cash upon the granting of the loan.

> "Such capital stock shall be held by said land bank as collateral security for the payment of said loan, * * * and it shall be paid off at par and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued."

The court below quoted the provisions of the Act, and stated:

> "The language of the statutes just quoted is clear, plain and definite. It will be noted that there is no provision under this law whereby the plaintiffs in error [Bank and Association] can escape the definite

requirement that when and if Phillips pays off his mortgage loan that The Knox National Farm Loan Association must pay off his stock at par and retire same. At the same time *the Federal Land Bank is required to pay off at par and retire the corresponding shares of its stock issued in connection with this loan to The Knox National Farm Loan Association, and of course the proceeds should be applied on the borrower's mortgage debt. The law makes no other provision for any other course to be followed no matter whether The Knox National Farm Loan Association is solvent or insolvent.*" (Italics added.) (R. p. 109.)

This interpretation of the Act ignores the plain requirement that "*full payment of the loan*" shall be a condition precedent to the normal retirement of stock pledged as security therefor. Under this interpretation, every borrower who has obtained a loan through a national farm loan association may discharge his debt with less money than his note calls for, and may obtain a release of his mortgage upon paying 95 per cent of the indebtedness ostensibly secured thereby. Every Federal land bank must write off 5 per cent of the original face amount of all mortgage loans made through national farm loan associations, to show their true carrying value as assets.

We cannot disregard this passage of the decision as obiter dictum. Although no judgment was entered against the Bank on the basis of this conclusion, the case remains open for further orders in connection with the administration of the Association's affairs, and the Bank remains a party to the proceeding. It is impossible to anticipate what steps the court and its receiver might deem appropriate to accomplish the result which the appellate court has indicated, in stating that "of course the proceeds [of the Association's stock in the Bank], should be applied on the borrower's mortgage debt."

When respondent commenced this suit, he had not fully repaid the debt which was secured by the Federal land bank's mortgage. He had paid all but 5 per cent of that debt, and had tendered his shares of stock in the association as payment of that balance. The situation remained the same throughout the trial of the case, where respondent contended that he was entitled to a release of his mortgage, on the ground that he had made a valid tender by offering to deliver up the stock in part payment of his debt. This issue was temporarily removed from the case many months later, when the trial court entered its preliminary decree ordering the Bank to release the mortgage upon receipt of cash payment for the balance of 5 per cent ($265). However, the issue was brought back into the case by the appellate court which, in effect, sustained Respondent's original contention as to the validity of his tender of payment.

Since the case remains open for the administration of the receivership, it cannot be presumed that the appellate court directed its remarks merely to a question which had become moot upon cash payment of the full balance of the mortgage debt. On the contrary, it must be presumed that the appellate court's ruling in this regard is in the nature of a general instruction to the lower court for the conduct of the receivership.

In *Federal Land Bank* v. *Crosley* (*supra*), this Court reviewed the provisions of the Farm Loan Act respecting loans through national farm loan associations, and defined the legal relationship of the parties to such loans—borrower, association, and bank. In that case, as in this, the borrower had "executed a promissory note to petitioner [bank], secured by mortgage upon her land, both of which she delivered to petitioner as required by the provisions of the Federal Farm Loan Act." In both cases, "the note, as the statute commands, bore the endorsement of the

agreement of the Association to be liable upon it." In both cases the borrower had subscribed and paid for shares of stock in the association, as required by 12 U. S. C. § 733; and had included the cost of those shares in the loan, as permitted by 12 U. S. C. § 742. In both cases the association had subscribed and paid "for capital stock of the lending federal land bank in like amount," and had pledged that stock with the bank as collateral security for the loan, in conformity with the requirements of 12 U. S. C. § 721. As this Court stated in the *Gaines* case:

> "In the present loan transaction, carried out in strict conformity with the statute, it was plainly contemplated that petitioner was to be the lender, and as lender it was to become the owner of the note and mortgage, in which it was named, respectively, as payee and mortgagee. Respondent, as maker of the note, and the Association, by its endorsement agreeing to be liable for its payment, were both to be obligated to pay the loan. As between the two, the Association was in the position of a surety or guarantor, entitled to be exonerated by the mortgage security and protected to some extent by the 5% stock subscription exacted of respondent. If the transaction were unaffected by the provisions of the Farm Loan Act, it would require no argument or citation of authority to support the conclusion that the delivery of the note and mortgage to the lender, and the receipt of the check from the lender, payable to the obligors upon the mortgage indebtedness, and their endorsement and the collection of it, would establish their liability for the payment of the loan, regardless of what might become of the proceeds."

> "The borrower is under no legal compulsion to borrow. If he takes the benefit of the privilege extended by the statute he can do so only in compliance with its requirement that he shall join, with himself as obligor, the local cooperative association of which he is a member." (Italics added.)

The ruling of the court below squarely conflicts with the foregoing decision. In the *Gaines* case this Court held that the borrower and the Association are both "obligated to pay the loan"—not 95 per cent of the loan. In the present case the lower court has held that the borrower is obligated to pay only 95 per cent of the loan.

In the *Gaines* case this Court held that as between the borrower and the Association, the latter is in the position of a surety or guarantor, entitled to be exonerated by the mortgage security and protected by the borrower's stock subscription. In the present case the lower court has held that as between the borrower and the Association, the latter is in the position of primary obligor for the last 5 per cent of the borrower's loan, and that the borrower is entitled to demand that this payment be made from the proceeds of the stock which the Association purchased from the Bank at the inception of the loan.

In the *Gaines* case this Court held that the borrower's obligation to the lending bank is unaffected by his account with the Association through which the loan was made. In the present case the lower court held that the borrower's obligation to the lending bank is diminished to the extent of his investment in capital stock of the Association.

The court below ignored the corporate entity of the Association, and proceeded on the theory that the Association's member acquired a personal interest and property right in an asset which the Association purchased with funds made available by that member's subscription to stock. This Court has repeatedly disaffirmed that theory, and has stated, as in *Gibbons* v. *Mahon*, 136 U. S. 549, 557:

> "The distinction between the title of a corporation, and the interest of its members or stockholders, in the property of the corporation, is familiar and well settled. *The ownership of that property is in the corporation, and not in the holders of shares of its stock. The interest of each stockholder consists in the right to a pro-*

*portionate part of the profits whenever dividends are declared by the corporation; during its existence under its charter, and to a like proportion of the property remaining, upon the termination * * * of the corporation, after the payment of its debts.*" (Italics added.)

The question involved in the present case was squarely presented in *Federal Land Bank* v. *Warner,* 42 Ariz. 201, 23 P. (2d) 563. (That case came here on writ of certiorari, but the question respecting capital stock was not involved, and was not mentioned in the decision of this Court, 292 U. S. 53.) The case arose upon the foreclosure of a mortgage held by the Federal land bank. The borrower contended that he was entitled to a set-off against his mortgage note, for the amount of his capital stock in the national farm loan association through which the loan had been made. In overruling the trial court which had allowed the set-off, the Supreme Court of Arizona stated:

> Under the provisions of the Federal Farm Loan Act, "the borrower is a stockholder in his association, and * * * his association in turn is a stockholder in the bank. The borrower is not a stockholder in the bank. *The relation he and the bank sustain to each other is that of debtor and creditor and, of course, what he owes the bank cannot be reduced by what the association owes him or may owe him upon a settlement.* The debts are not between the same persons or corporations or their assigns—an essential to the right of set-off or counterclaim." (Italics added.)
>
> "Until the borrower redeems his membership stock in the association by the discharge of the mortgage debt, he certainly has no right to have such stock, or a credit for it. *Before he can claim such shares, he must discharge the debt for the payment of which they were pledged. To the extent of their value, equity will hold and apply the borrower's shares on the debts of the association and the double liability of his fellow stockholders in the association.*" (Italics added.)

In the foregoing case, the Arizona court quoted and relied upon *Byrne* v. *Federal Land Bank* (*supra*), where it was stated:

> "The * * * borrower is a stockholder in the loan association, not in the Federal Land Bank. It is the corporation known as the 'loan association' which is the stockholder in the Federal Land Bank. * * * This relationship is not altered because the law requires additional stock in the land bank to be taken by the loan association * * *."
>
> "The stock taken by the loan association belonged to that corporation, and not to him. Hence the plaintiff has no cause of action against the Federal Land Bank. It is true upon payment of his loan the law required the cancellation of the stock taken in the Federal Land Bank by the Farm Loan Association because of the loan granted to the plaintiff."
>
> "Naturally, upon payment of the loan and the cancellation of the stock in the bank taken by the loan association, the Federal Land Bank would owe the loan association the face value of the stock. * * * the loan association was indebted to the Federal Land Bank at the time the plaintiff's loan was paid, consequently *when the stock was cancelled the value of the stock was used by the land bank as an offset to a portion of the indebtedness of the federal loan association, thus cancelling this portion of the debt. The Federal Land Bank therefore is not indebted to any one on account of stock.*" (Italics added.)

When the present suit was filed and when the testimony was taken, respondent's position was the same as that of the plaintiff in the *Warner* case (*supra*). He had not fully paid his loan. There is not a syllable in the Act which sustains his claim—or the conclusion of the appellate court—that when he has paid all but 5 per cent of his loan, the Bank must credit the balance with the proceeds of collateral pledged by the Association.

The court below has misconceived the purpose which underlies the requirements of the Act for contemporaneous subscriptions to capital stock in connection with loans through national farm loan associations. The court appears to regard these requirements as designed to provide a fund at the Bank, on which the borrower may draw for the purpose of discharging the final payments on his loan (or for the purpose of obtaining a cash rebate of 5 per cent, after he has fully paid the debt). The fallacy of that view is apparent from the Act itself, and is forcibly demonstrated by the legislative history of the Act.

Section 7 of the Act (12 U. S. C. § 722) provides—

> "The capital stock of a Federal land bank shall not be reduced to an amount less than 5 per centum of the principal of the outstanding farm loan bonds issued by it."

Thus, the Act shows that the capital stock of a Federal land bank is required for the protection of its bondholders, and that such stock may at no time be reduced below a stipulated ratio to outstanding bonds. That prohibition is contained in the same section of the Act (§ 7) which provides that stock issued by a Federal land bank in connection with a loan shall be paid off at par and retired upon full payment of said loan (12 U. S. C. § 721). The prohibition, therefore, limits and restricts the Bank by prohibiting the retirement of stock, even in connection with paid-off loans, where the required ratio of stock to bonds would be impaired.

The framers of the Act described capital to be furnished by national farm loan associations as a "cushion" against anticipated losses. During the debates on the floor of the House of Representatives the question was asked—what provision was made to prevent the system from going into bankruptcy. Representative Hayes, a member of the

Joint Committee on Rural Credits which had prepared the bill under consideration, replied as follows:

> "Of course, * * * you cannot prevent by law any system of financial institutions from becoming bankrupt. The only thing that can be done is to provide by law for every possible emergency and to make it as safe as it can be made. That is the attempt here. That is the reason for stock subscription by the borrower and for his liability, * * * in order to make the institution absolutely safe. It has another purpose also. That stock liability * * * in addition makes the loan committee, who are all members of the local association * * * liable for poor loans and for any default on the part of the borrower—it makes them cautious to see to it that they do not make loans that will not be paid back in full by the borrower." (*C. R., 64th Congress, 1st Session, p. 7541.*)

During the debates on the floor of the Senate, it was stated by Senator Hollis who was in charge of the bill:

> "In order to have a successful mortgage-bank system, it is necessary to have a guarantee fund to take up the slack of bad loans. If you just loan the money on the mortgages, and then put up the mortgages as security for an issue of farm-loan bonds, some day there will appear a bad mortgage and you will not have anything to take that out of, * * * and when one drops out you are just so much short.
>
> "Now, it is recognized all over this country and in Europe that in a land-mortgage system you should have a guaranty fund of 5 per cent. You may call it capital. We do in this instance. In this case we have to have a 5 per cent capital, 5 per cent on the amount of our mortgages, 5 per cent on the amount of our bonds. The Government starts out with 12 banks with a capital of $500,000 each, but that would not be enough to support mortgages and bonds of $6,000,000. Therefore we must have some way of getting additional capital in order to impose an issue of bonds

upon it. The only way to do that under a cooperative system, as this is, is to get it from the borrower himself." (*C. R., 64th Congress, 1st Session, p. 6853.*)

In reporting favorably on the measure which was passed, with amendments, as the Federal Farm Loan Act, both the Senate and House Committees on Banking and Currency (*64th Congress, 1st Session, Senate Report No. 144, House Report No. 630*) made substantially the same statements as that quoted below from the report of the Joint Committee on Rural Credits, by which the measure was first proposed:

"Every farm loan bond is secured as follows:

1. By the capital, reserves, and earnings of the land bank which issues it.

2. By the capital, reserves, and earnings of the 11 other land banks.

3. By the collective security of all the mortgages * * * * of the land bank, the mortgages pledged being at least equal in amount to the outstanding bonds.

"Every mortgage pledged as collateral is secured as follows:

1. By the personal undertaking of the borrower.

2. By the security of the mortgaged land * * *.

3. *By the capital, reserves, and earnings of the local association indorsing the loan.*

4. By the individual liability of the members of the indorsing association." (*H. R., Doc. No. 494, 64th Congress, 1st Session,* p. 10.)

It is plain from the Act and from the foregoing statements made while it was under consideration, that the purpose in requiring the purchase and pledge of capital stock was to insure the safety of the bonds which would be

issued by the Federal land banks. "The success of the rural-credit system depends upon the marketability of its bonds" (*H. R., No. 630, 64th Congress*). As this Court pointed out in the *Gaines* case (*supra*):

> "The banks were to make loans to farmers, upon the security of farm mortgages, with funds obtained in large part by the sale to investors of long term bonds. * * * To adapt the system to local needs and to promote cooperation among borrowers, it was proposed that the loans should be made through local associations controlled by their membership."

Meticulous care was taken by the framers of the Act to insure the soundness of that system from the viewpoint of investors. It was felt that without the confidence of those investors, there would be no market for farm loan bonds, and no funds to be loaned on farm mortgage security.

The Act permits a Federal land bank to issue bonds, dollar for dollar, against the security of approved farm mortgages (12 U. S. C. § 841). The Act requires that such mortgages be deposited, as collateral security, with a farm loan registrar who is an officer of the United States (12 U. S. C. § 853). The Act requires the registrar to see that the farm loan bonds issued by any bank and outstanding do not exceed the amount of collateral security pledged therefor (12 U. S. C. § 855), and authorizes the Farm Credit Administration to call upon any bank for additional security to protect the bonds issued by it (12 U. S. C. § 856).

Thus, each Federal land bank is required to deposit and maintain with the farm loan registrar collateral security at least equal in amount to outstanding bonds. Under the theory of the court below, the farm mortgages which constitute the major part of the collateral security, are actually worth less than face value. Under that theory, each mortgage can be discharged by payments aggregating 95 per cent of the original principal of the loan; and the per-

centage of the unpaid balance of each loan which is actually collectible from the borrower becomes progressively less, as he pays successive installments of principal. The theory of the court below is plainly untenable, resulting, as it does, in an impairment of the collateral security which is eligible for farm loan bonds. As this Court stated in the *Gaines* case (*supra*):

> "We should regard as persuasive the fact that a different conclusion would break down the scheme of the Act to make the mortgages taken by the Federal land banks available as collateral for Federal land bank bonds sold to investors."

The record in the present case shows that the Knox Association is indebted to the Bank for an amount which it cannot pay from current assets. The Act requires that the Bank pay off at par and retire the stock issued in connection with paid-off loans. That is, the Bank must retire the stock which the Association has subscribed, and pay the proceeds of such stock to the Association. In the case of the Knox Association, the retirement of stock results in counter-indebtedness—the Association is indebted to the Bank, and the Bank is indebted to the Association for the proceeds of the retired stock. The stock so retired ceases to exist, and in its place the Bank holds the par value of such stock in money, for which it must account to the Association. Thus, there are mutual money demands which may be set off, one against the other. As this Court stated in *Studley* v. *Boylston National Bank*, 229 U. S. 523, 528:

> "Set-off represents the right which one party has against another to use his claim in full or partial satisfaction of what he owes the other. That right is constantly exercised by business men in making book entries whereby one mutual debt is applied against another. * * * Such counterclaims can be asserted

as a defense or by the voluntary act of the parties because it is grounded on the absurdity of making A pay B when B owes A."

In the present case the Bank has the right to set off its debt to the Association, for the proceeds of retired stock, against the Association's debt as indorser of defaulted mortgages. This right is inherent in the Bank's position as the holder of money payable to another, against whom the Bank has a money claim.

Also, the right of set-off is specifically provided for in the Indemnity Agreement between the Bank and the Knox National Farm Loan Association. (R. p. 87.) That agreement provides for an account to which may be credited any moneys otherwise payable to the Association, as an indemnity against any loss which the Bank may suffer in connection with the liquidation of the security for defaulted loans made through the Association.

We earnestly submit that Respondent, as a shareholder of the Knox National Farm Loan Association, had no personal right or interest in the shares of stock which the Association purchased and pledged with the Bank as collateral security for his loan. Those shares of stock constituted an asset of the Association. Upon liquidation of that asset, by retirement of the shares of stock in the Bank, the Association became the Bank's creditor for an amount equal to the par value of the stock—and became immediately subject to the rule of set-off, under which the Bank may and should apply that debt against the Association's debit balance.

There was no privity of contract between Respondent and the Bank with respect to those shares. Respondent has at no time been a shareholder of the Bank. The Association has been the Bank's shareholder, and Respondent has no individual property right growing out of the Association's subscription to any shares of Bank stock.

To allow Respondent any claim against the proceeds of stock of the Bank which was issued to the Association would be to reverse the plain intent and purpose of the Farm Loan Act, which provides that the shareholders of every national farm loan association shall be held individually responsible, equally and ratably, for all contracts, debts and engagements of such association to the extent of the amount paid in and represented by their shares of stock.

4. The Association did not agree to confer upon Respondent the status of creditor for the amount of his capital subscription, and any contract purporting to confer such status would have been ultra vires and unenforceable.

The court below held that Respondent "is both a creditor and a stockholder" of the Association, and approved the judgment of the trial court partly because of "the definite agreement and promise of the Knox National Farm Loan Association, to the effect that upon final payment of the loan the stock held by Phillips was to be paid off at par." The "agreement" to which the court referred (R. p. 71) is quoted below.

> "Receipt for Stock Held by Knox National Farm Loan Association.
>
> "This acknowledges that there has been this date issued to A. C. Phillips, a member of Knox National Farm Loan Association of Mt. Vernon, State of Ohio, Certificate No. 93 for 53 shares of Capital Stock of the par value of $5 in the above-named Association.
>
> "This stock is issued in connection with the loan of $5300.00 made through this Association * * *. This stock is being held by this Association pursuant to the provisions of the Federal Farm Loan Act as collateral security for the payment of the loan * * *.
>
> * * * * * * * *

*"This receipt represents your investment in stock on which dividends will be paid. It will be accepted at face value on final payment of loan. * * *" (Italics added.)*

That document is not an agreement at all. It is entitled "Receipt for Stock Held", etc., and is so designated in its concluding paragraph. It is a mere unilateral receipt for a deposit of collateral. It does not purport to state the terms of the agreement under which the collateral was pledged, except by reference to the Federal Farm Loan Act.

The instrument states that the collateral is a stock certificate—a contract in and of itself; that the stock was issued "in connection with" a certain loan "made through this Association"—a contract in and of itself; and that the stock is being held by the Association as collateral security, "pursuant to the provision of the Federal Farm Loan Act." Thus, the instrument shows on its face that the rights and obligations of the parties to the collateral pledge are controlled by the Act; and that the rights and obligations of the parties to the several contracts are controlled by the contracts themselves.

Among other recitals which describe the collateral and the incidents of ownership are the statements: "stock on which dividends will be paid"; and "it will be accepted at face value on final payment of loan." These statements are of equal dignity. Yet the court below found a definite promise and agreement in the words "will be accepted", without attributing any such significance to the words "will be paid" in the preceding sentence of the receipt. Obviously, the court could not have found an enforceable contract to pay dividends, both because there was no stipulation as to the rate and date of such payments, and because the association may pay dividends only when properly declared by the board of directors, and approved by the Farm Credit Administration (12 U. S. C. § 913). Though posi-

tive in form, the recital as to dividends is susceptible of one interpretation only, that is: Dividends will be paid upon the stock if and when lawfully declared by the board of directors of the Association. The correctness of that interpretation has been tacitly conceded throughout this case, by Respondent's failure to make any claim for dividends.

The words "will be accepted" must be construed in the same manner when used in the following sentence of the same instrument. That is: The receipt will be accepted (redeemed in cash) at face value on final payment of the loan, if, at that time, the Association can lawfully pay off stock at par.

These words are merely descriptive of benefits which Respondent may expect to derive from his subscription to capital stock. As a shareholder, Respondent has no right to withdraw his capital when the Association is insolvent. Since the Receipt for Stock does not purport to create new rights, it does not purport to confer upon Respondent any such right of withdrawal.

Even if an absolute and unqualified promise were made by the words "will be accepted at face value", the instrument shows on its face that there was no consideration for any such promise, and that no right of action can be based thereon.

However, let us assume, for the moment, that the "Receipt for Stock" contains a definite promise and agreement that respondent's stock is "to be paid off at par" upon final payment of his loan, regardless of the solvency or insolvency of the Association. Let us also assume, as the court below must have done, that consideration for that agreement is evidenced by the instrument itself. Such an agreement would enlarge the rights which Respondent acquired when he became a member and shareholder of the association. It would vary the terms of his statutory contract of membership. It would be void and unenforceable, because

the Association has no power to contract with its member for the redemption of his stock on any other basis than that prescribed by the Act.

Under the Act, Respondent and all other shareholders of the Association are liable, equally and ratably, for all contracts, debts and engagements of the Association to the extent of the amount of stock owned by them. (12 U. S. C., § 744.) Respondent's contract as a shareholder includes that provision of law. As this Court stated in *Richmond v. Irons*, 121 U. S. 27, 55 (quoted in *Matteson v. Dent*, 176 U. S. 521, 526):

> "Under the act the individual liability of the shareholders is an essential element of the contract by which the stockholders became members of the corporation. It is voluntarily entered into by subscribing for and accepting shares of stock. Its obligation becomes a part of every contract, debt, and engagement of the bank itself, as much so as if they were made directly by the stockholder instead of by the corporation."

The Association is not authorized to abrogate the individual liability clause of its contract with any member, by a collateral agreement to recognize him as a creditor, whenever he elects to withdraw his stock subscription. Any agreement to that effect would be ultra vires and void.

It has repeatedly been held that collateral agreements are void and unenforceable, when entered into by mutual associations for the purpose of preferring one shareholder over others. In *Kline v. Ariz. Mut. Sav. & L. Assn.* (C. C. A. 9th), 235 F. 694, an insolvent association had procured the delivery of secured notes to a withdrawing shareholder, for the par value of his stock. In refusing to enforce the secured notes issued to the shareholder, the court stated:

> "To sustain the appellant's exclusive claim to them [the collaterals] would be to subordinate to that extent

the rights of all other stockholders of the insolvent association, which would be manifestly contrary to the well established law upon the subject." (L. C. 701.)

In *Standard Savings and Loan Ass'n.* v. *Aldrich* (C. C. A. 6th), 163 F. 216, an insolvent association had borrowed money in order to satisfy the demands of withdrawing shareholders. This purpose was known to the lender. The court refused to enforce the loan contract against the insolvent association. The opinion in the case (written by Mr. Justice Lurton, then circuit judge) contains a clear and forceful discussion of the obligations of shareholders in mutual associations.

"The power to borrow money to pay off withdrawing stockholders cannot be legitimately inferred or implied. * * * *The withdrawal of a shareholder is the withdrawal of capital pledged primarily to creditors and to carry on the business for which the association was organized. The funds applicable therefore to the payment of withdrawing shareholders is the fund arising from the current contributions of a solvent and going association, and no other funds can be legitimately so applied.* This we think plain from the relation of shareholders to such associations * * *." (Italics added.) (l. c. 219.)

"Such a borrowing would not be for the purpose of paying debts and liabilities in due course of business. * * * Appellants * * * had notice that the borrowing was for the payment of withdrawing shareholders and are constructively charged with knowledge that the managers were acting without power in so doing and in assigning the mortgages of borrowing shareholders to secure the loan. *A contract beyond the scope of the power of the * * * Association, express or implied, cannot be enforced by an appeal to the rules of estoppel. Any such application of the doctrine would be, in effect, to enlarge the power of the corporation in accordance with the discretion of its managers, vio-*

lating thereby the rights of innocent shareholders and a sound public policy." (Italics added.) (l. c.-220.)

"* * * *the Association was insolvent at the time. This fact, without more, suspended the power and right of the directors to apply any funds to the payment of withdrawing shareholders.*" (Italics added.) (l. c. 220.)

"*If this [borrowed] money was applied to pay off withdrawing stockholders, the association has not been benefited.*" (Italics added.) (l. c. 223.)

The above quoted opinion cites the following decisions of this Court holding that an ultra vires contract will not support an action: *Central Transportation Co.* v. *Pullman's Palace Car Co.*, 139 U. S. 24, 60; *Railway Co's.* v. *Keokuk Bridge Co.*, 131 U. S. 371, 389; *McCormick* v. *Market Bank*, 165 U. S. 538, 549; *Calif. Bank* v. *Kennedy*, 167 U. S. 363, 368. (See also: *Awotin* v. *Atlas, etc. Nat. Bank*, 295 U. S. 209.)

The effect of withdrawal from a cooperative association is the same as the effect of a monied corporation's purchase of its own stock. The Circuit Court of Appeals for the Second Circuit (*In re Fechheimer Fishel Co.*, 212 F. 357) held that where a solvent corporation agrees to purchase its own stock, and thereafter becomes insolvent, the contract is unenforceable. The corporation involved in that case had issued "debenture bonds" which were, in reality, preferred stock. The holder of one of these "debenture bonds" surrendered it in exchange for the corporation's promissory note for the face amount of the instrument; and upon the maturity of the note, a renewal note was given by the corporation. Thereafter, the corporation was adjudicated bankrupt, and the payee of the renewal note filed his claim as a creditor. The bankruptcy court held that the payee's right were those of a shareholder. In sustaining that decision, the Circuit Court of Appeals said:

"A solvent corporation, of course, holds its property as any individual holds his. But when a corporation becomes insolvent, a trust arises in respect to the administration of its assets for the benefit of its creditors. * * * *Hence when a corporation buys its own stock payment cannot be made with funds which upon insolvency belong to its creditors instead of to its stockholders. Cook on Corporations* (7th Ed.), vol. 1, § 9, pp. 42, 43." (Italics added.) (l. c.-364.)

"The stock of a corporation is its only basis of credit, and it is of vital importance that it be rigidly guarded and protected. Courts have conceived it to be their duty to detect and defeat any scheme or device calculated in any way to place this fund beyond the reach of the creditors. * * * As the illegality of a purchase by a corporation of its stock rests upon the fact that it withdraws assets upon which the creditors have a superior right or lien, it seems to us that even though the company may have been solvent when the contract to purchase was made, if it becomes insolvent later or is made insolvent by the transaction and is in that condition at the time when payment is to be made, the vendor cannot as against creditors be permitted to take the assets for that purpose * * *. In the case at bar, when the corporation bought the stock and gave its note to Rothenberg, it in effect promised to pay him $50,000 out of surplus profits and if payment could be made without prejudice to creditors. To be sure the note did not so state on its face, but that was a condition which the law attached to it and which was binding on both Rothenberg and the company." (l. c.-365.)

In *Keith* v. *Kilmer* (C. C. A. 1st), 261 F. 733 (certiorari denied, 252 U. S. 578), it was held that the stockholder of a corporation may not "be transmuted from a stockholder into a creditor, and as such be permitted to share in the assets" by an executory contract between himself and the corporation. In that case, a corporation had contracted with certain shareholders to purchase their stock. There-

after the corporation became insolvent, and the shareholders filed claims as creditors, based upon the contract. The court cited *In re Fechheimer Fishel Company* (*supra*) and other Federal and state cases holding that a corporation's agreement to pay for its own stock cannot be enforced to the injury of creditors—such agreement being the equivalent of a contract to diminish its capital; and that the stockholders of a corporation hold their stock subject to all the equities which attach.

In *Warren* v. *King*, 108 U. S. 389, this Court construed certificates for preferred stock, which had been issued to former creditors upon the reorganization of a railroad corporation. The reorganized corporation became insolvent, and the holders of this preferred stock contended that their certificates entitled them to a lien upon all property and franchises of the company, superior to the claims of creditors. In overruling that contention, this Court stated:

> "But it is stock, and part of the capital stock, with the characteristics of capital stock. One of such characteristics is, that no part of the property of a corporation shall go to reimburse the principal of capital stock until all the debts of the corporation have been paid. It would require the clearest language to admit of the application of a different rule to any capital stock." (l. c.-396.)
>
> "His chance of gain, by the operations of the corporation, throws on him, as respects creditors, the entire risk of the loss of his share of the capital, which must go to satisfy the creditors in case of misfortune. *He cannot be both creditor and debtor, by virtue of his ownership of stock.*" (Italics added.) (l. c.-399.)

In *Spencer* v. *Smith* (C. C. A. 8th), 201 F. 647, 655, it was held that a provision in a stock certificate would be void as against public policy, if it were construed as allowing the

corporation to pay preferred stockholders ahead of creditors.

Warren v. *King* (*supra*) was quoted by Mr. Justice Lurton, in the opinion which he wrote for the Circuit Court of Appeals for the Sixth Circuit in *Hamlin* v. *Toledo etc. R. Co.* (C. C. A. 6th), 78 F. 664, 670, 671, where it was stated:

> "There is a wide difference between the relation of a creditor and a stockholder to the corporate property. *One cannot well be a creditor as respects creditors proper, and a stockholder by virtue of a certificate evidencing his contribution to the capital of the corporation.* Stock is capital, and a stock certificate but evidences that the holder has ventured his means as a part of the capital." (Italics added.)
>
> "If the purpose in providing for these peculiar shares was to arrange matters so that, under any circumstances, a part of the principal of the stock might be withdrawn before the full discharge of all corporate debts, the device would be contrary to the nature of capital stock, opposed to public policy, and void as to creditors affected thereby."
>
> Capital stock "*is a liability which is postponed to every other liability, and no part of the capital stock can be lawfully returned to the stockholders until all debts are paid or provided for. The violation of this well-understood principle is a breach of trust, and a creditor affected thereby may pursue the stockholders, and recover as for an unlawful diversion of assets.*" (Italics added.)

The rule of the foregoing cases has been reversed in the present suit. The courts below have construed Respondent's "Receipt for Stock" as an executory contract by which the Association agreed to pay off its stock at par when Respondent had fully repaid his loan; and both courts have held that this executory agreement is enforceable against the

Association, even though, at the date of performance, the Association is insolvent.

We earnestly submit that, when Respondent's "Receipt for Stock" is construed in the light of the authorities, the following conclusions are inevitable: (1) the instrument does not purport to be and is not an executory agreement; (2) any promissory language in the instrument must be read, if possible, as including an implied reference to the limitations and conditions of the Farm Loan Act; and (3) if the instrument contains promissory provisions which are inconsistent with the limitations of the Act, such provisions are unenforceable and void.

5. A national farm loan association is an instrumentality of the United States, and jurisdiction to wind up such association, upon insolvency, is vested exclusively in the Farm Credit Administration.

This Court has repeatedly held that a Federal land bank is an instrumentality of the Government of the United States, created and operated for a public purpose pursuant to a valid act of Congress. *Smith* v. *Kansas City Title and Trust Co.* (*supra*); *Federal Land Bank* v. *Gaines* (*supra*); *Federal Land Bank* v. *Crosland*, 261 U. S. 374; *Federal Land Bank* v. *Priddy*, 295 U. S. 229.

The national farm loan association is an integral part of the Federal land bank system. It is the local unit. The association and the bank are coordinate agencies, each designed to perform related functions as instrumentalities of the Federal Government. The facilities and services of the association are required from the inception of every loan which it recommends, to the final liquidation of that loan. Every act which the association takes in connection with a loan is in furtherance of the safety and security of a mortgage which is "an instrumentality of the Government of the United States." (12 U. S. C. §931.)

The general corporate powers conferred upon Federal land banks, including the power "to have succession until * * * dissolved by Act of Congress, or under the provisions of this chapter" (12 U. S. C. §676, Second) have, so far as may be applicable, been granted to national farm loan associations (12 U. S. C. §716). The provisions for liquidation of insolvent national farm loan associations have been made applicable to Federal land banks (12 U. S. C. §963).

This Court has recognized that a corporation or other enterprise may become a Federal instrumentality, by virtue of its connection with an agency of the Federal Government. In the very recent case of *Rogers* v. *Graves* (decided January 4, 1937), it was pointed out that the Panama Canal is an instrumentality for the regulation of interstate and foreign commerce, and that the operation of the canal is a Government function.

> "Such being the status of the canal, it requires no argument to demonstrate that all auxiliaries primarily designed and used to aid in its management and operation, and which have that effect, partake of its nature and are themselves cooperating regulators—or, perhaps more accurately speaking, constitute, with the canal, a single great regulator—of national and international commerce. And this, we think is the effect of the interrelation of the railroad company's activities with the management and operation of the canal."
>
> "* * * the railroad itself, in connection with the canal, is a federal instrumentality."

The operations of the Federal land bank are geared to the existence and functioning of the associations of its district. The bank's stock is owned by these associations which have voice in the bank's management, through the directors whom they elect. In short, the associations are instrumentalities which were deemed appropriate by Congress to

the end of establishing and maintaining the Federal land banks as effective public agencies.

In the *Gaines* case (*supra*) this Court stated that both the Federal land banks and the national farm loan associations are, "in a broad and general sense, public agencies or instrumentalities to carry out a policy of Government—the extension of credit to those engaged in agriculture to be availed of in the furtherance of agricultural undertakings." This passage of the *Gaines* decision appears to affirm—as equally applicable to banks and associations—the proposition which was advanced in the brief filed on behalf of the Federal Land Bank of Wichita in *Smith* v. *Kansas City Title and Trust Co.* (*supra*), that:

> "The Federal Land Banks * * * constitute facilities and instrumentalities for the use of money for a public purpose of great importance; and it was clearly within the authority of Congress, either to appropriate money or to issue Government bonds and apply the proceeds directly through the Treasury Department to the end in view, or to create these facilities and instrumentalities as appropriate means to the same end."

Whether the Association—a Federal instrumentality—is subject to suit, and if so to what extent, is a question which must be determined in the light of the Federal Farm Loan Act—the organic law by which Congress authorized the creation of the corporation, and defined its powers, duties and liabilities. This Court stated in *Van Reed* v. *People's Nat'l Bank*, 198 U. S. 554, 557:

> "*The right of Congress to determine to what extent a state court shall be permitted to entertain actions against national banks * * * is undeniable.*" (Italics added.)

In stating the powers of a national farm loan association (12 U. S. C. § 761), the Act is silent with respect to the

association's capacity to sue and be sued. However, the Act provides (12 U. S. C. § 761) that the incorporators shall "organize subject to the requirements and conditions specified" in 12 U. S. C. §§ 671-683, which relate to Federal land banks. In 12 U. S. C. § 676, Federal land banks are empowered "to sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons." These two provisions of the Act have always been read together, as authorizing suits by and against national farm loan associations.

If the foregoing provisions stood alone, without any qualifications or restrictions imposed by other sections of the Act, they might be construed as authorizing a court of equity to appoint a liquidating receiver for a national farm loan association, in a proper case. *Pennsylvania* v. *Williams* and related cases, 294 U. S. 176, *et seq.; Federal Land Bank* v. *Priddy*, (*supra*). However, the Act prescribes a special procedure for winding up an association. When Congress provided for an administrative receivership, the entire matter of liquidation was withheld from the jurisdiction conferred upon the courts by the "sue and be sued" clause. To paraphrase the language of this Court, the result is that *all the receivership laws of the State must be read as if they contained a provision in express terms that they were not to apply to suits against a national farm loan association.* (*Van Reed* v. *People's National Bank, supra*, l.c. 558.)

The Farm Credit Administration has plenary authority to wind up insolvent corporations of the land bank system. That authority is conferred by § 29 of the Federal Farm Loan Act (12 U. S. C. §§ 961-966). When any land bank or national farm loan association has "failed to meet its obligations of any description," it may be declared insolvent and wound up forthwith. The receiver must thereupon proceed

under the direction and control of the Farm Credit Administration. The prescribed method of liquidation is full, complete and adequate. The provisions of the Act are inconsistent with any other mode of involuntary liquidation, and the Act prohibits voluntary liquidation without the consent of the Farm Credit Administration. (12 U. S. C. § 965.)

In *Wheeler* v. *Greene,* 280 U. S. 49, this Court pointed out that the provisions of the Federal Farm Loan Act dealing with insolvency of farm loan associations (12 U. S. C. § 961, *et seq.*) "closely follow the words of the earlier National Bank Act, R. S. § 5234; Code, Tit. 12, § 192, stating the duties of the receiver of a bank * * *, and giving him power to take possession of books and assets and to collect debts, etc." The Court referred to the receivership provisions of the National Banking Act as the "prototype" or "model," and the provisions of the Farm Loan Act as the "copy." The striking similarity of these provisions is apparent from the following analysis:

National Banking Act.	Federal Farm Loan Act.
12 U. S. C. § 191.	12 U. S. C. § 961.
"Whenever * * * the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of its affairs, * * * appoint a receiver who shall proceed to close up such association * * *."	"Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description, the Farm Credit Administration may forthwith declare such association insolvent and appoint a receiver
12 U. S. C. § 192.	
"the Comptroller of the Currency may * * * require of him [the receiver] such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct * * *.	and require of him such bond and security as it deems proper * * *. Such receiver, under the direction of the Farm Credit Administration, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Farm Credit Administration, or upon the order of a court * * * of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Farm Credit Administration or said court shall direct.

National Banking Act—Continued.

12 U. S. C. § 192.

Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings.

"*Provided*, That the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any State or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States * * *. Such depositary shall pay upon such money interest at such rate as the comptroller may prescribe * * *."

12 U. S. C. § 194.

"From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the Comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved * * *; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association * * *."

Federal Farm Loan Act—Continued.

12 U. S. C. § 962.

Such receiver shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Farm Credit Administration, and also make report to said administration of all his acts and proceedings.

"The Secretary of the Treasury shall have authority to deposit at interest any money so received."

54

12 U. S. C. § 964.

"If any national farm loan association shall be declared insolvent and a receiver shall be appointed therefor by the Farm Credit Administration, the stock held by it in the Federal land bank of its district shall be canceled without impairment of its liability and all payments on such stock * * * shall be first applied to all debts of the insolvent farm loan association to the Federal land bank and the balance, if any, shall be paid to the receiver of said farm loan association: *Provided*, that in estimating said debts contingent liabilities incurred by national farm loan associations * * * on account of default of principal or interest of indorsed mortgages shall be estimated and included as a debt, and said contingent liabilities shall be determined by agreement between the receiver and the Federal land bank of the district, subject to the approval of the Farm Credit Administration, and if said receiver and said land bank cannot agree, then by the decision of the Land Bank Commissioner, and the amount thus ascertained shall be deducted in accordance with the provisions of this section from the amount otherwise due said national farm loan association for said canceled stock."

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This Court has repeatedly held that national banks are withdrawn from the application of general law, both with respect to operation and winding up, to the extent that such matters are covered by the National Banking Act. In *Cook County National Bank* v. *United States*, 107 U. S. 445, 448, the Act was said to constitute "by itself a complete system for the establishment and government of national banks," including—

> "their liability to be placed in the hands of a receiver, and the manner, in such event, in which their affairs shall be wound up, their circulating notes redeemed, and other debts paid or their property applied towards such payment. Everything essential to the formation of the banks, the issue, security, and redemption of their notes, *the winding up of the institutions, and the distribution of their effects, is fully provided for, as in a separate code by itself, neither limited nor enlarged by other statutory provisions with respect to the settlement of demands against insolvents or their estates.*" (Italics added.)

In the above-quoted case it was held that the provisions of the National Banking Act, for ratable distribution of assets among creditors, have the effect of withdrawing insolvent national banks from the general provisions of law which give the United States preference over all other creditors, in the event of insolvency. On this point the court stated:

> "* * * *a law embracing an entire subject, dealing with it in all its phases, may thus withdraw the subject from the operation of a general law as effectually as though, as to such subject, the general law were in terms repealed."

In *Easton* v. *Iowa* (1902), 188 U. S. 220, 231, 238, this Court held that the officers of a national bank cannot be prosecuted for violation of a state law prohibiting the ac-

ceptance of deposits during insolvency. In its opinion the court stated:

> "* * * Congress has provided a symmetrical and complete scheme for the banks to be organized under the provisions of the" National Banking Act.
>
> "*Congress has directly dealt with the subject of insolvency of such banks by giving control to the Secretary of the Treasury and the Comptroller of the Currency, who are authorized to suspend the operations of the banks and appoint receivers thereof when they become insolvent* * * *; full and adequate provisions have been made for the protection of creditors of such institutions by requiring frequent reports to be made of their condition, and by the power of visitation by Federal officers; * * * *it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government.*" (Italics added.)

In *Davis* v. *Elmira Savings Bank*, 161 U. S. 275, 283, this Court held that the National Banking Act controls the distribution of the assets of an insolvent national bank, and that a state law is inoperative to confer a preference upon certain creditors. In its opinion the Court said:

> "National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt, by a State, to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the Federal government to discharge the duties, for the performance of which they were created. These principles are axiomatic, and are sanctioned by the repeated adjudications of this Court."

It is apparent from the two cases last cited that this Court has recognized the National Banking Act as the paramount and exclusive law, both with respect to the substantive rights of interested parties in the assets of an insolvent bank, and with respect to the remedy of liquidation by an administrative receivership.

This Court has held that the remedy afforded by the National Banking Act is exclusive, in so far as it concerns the enforcement of the personal liability of shareholders. In *Kennedy* v. *Gibson*, 8 Wall. 498, the statutory receiver of a national bank brought suit against certain shareholders to enforce their personal liability. The defendants demurred on the ground that the complaint failed to show action by the Comptroller of the Currency, determining that a deficiency existed, etc. This Court held that the demurrer was properly sustained, because—

> "It is for the comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion, and his determination is conclusive. * * * He may make it at such time as he may deem proper, and upon such data as shall be satisfactory to him. This action on his part is indispensable, whenever the personal liability of the stockholders is sought to be enforced, and must precede the institution of suit by the receiver." (l. c.-505.)
>
> "Creditors must seek their remedy through the comptroller in the mode prescribed by the statute; they cannot proceed directly in their own names against the stockholders or debtors of the bank." (l. c.-506.)

It is significant to note, in connection with this decision, that the Comptroller's authority rests upon the statutory provision that he "*may*, if necessary to pay the debts of such association, enforce the individual liability of the stock-

holders'' by his receiver. The conclusion is evident that, when a national bank becomes insolvent, the remedies expressly afforded by the National Banking Act are the only available remedies, and exclude any other mode of procedure.

The courts have for many years proceeded upon the assumption that power to wind up a national bank was vested exclusively in the Comptroller of the Currency, by the provisions of the National Banking Act which authorize administrative receiverships. In *Boyd* v. *Schneider* (C. C. A. 7th), 131 F. 223, 227, it was stated:

> "The national banking act provides a system for the collection of the assets of an insolvent bank, and their distribution among creditors. *The legal machinery for this is a receiver appointed by the comptroller of the currency, and removable by him, in whom is vested all rights of receivership, to the exclusion of all other receivers or assignees * * *. It substitutes for the bank solvent, the machinery provided for the bank insolvent.*" (Italics added.)

In the same case it was stated that the insolvency provisions of the National Banking Act "will exclude all other forms of administration" (citing *Kennedy* v. *Gibson* (*supra*); *In re Manufacturers' Nat'l. Bank* (D. C., Ill.), Fed. Cas. No. 9051, 16 F. Cas. 665; *Washington Nat'l. Bank* v. *Eckels* (C. C.) 57 F. 870; and *Pahquioque Bank* v. *Bethel Bank*, 36 Conn. 325, 4 Am. Rep. 80), and that—

> "These cases hold that national banks cannot, at the suit of creditors, be thrown into bankruptcy, or their affairs wound up in accordance with the statutes of states providing for the winding up of corporations. * * * *proceedings to wind up, and bankruptcy proceedings, are essentially administrative. No one doubts the power of congress to provide the machinery for such administration, and no one doubts the intention of*

> *congress, in the enactment of the national banking act, that to the extent national banks* were concerned, such machinery should be embodied in the powers conferred upon the comptroller." (Italics added.)

In passing upon the same case, the Circuit Court stated (*Boyd* v. *Schneider*, 124 F. 239, 242):

> "It would seem that the powers given by the statute to the Comptroller are in their nature judicial. He can determine when a bank is insolvent. He alone is charged with the duty of enforcing compliance with the provisions of the law * * *. He must, through the receiver, take possession of all the bank's assets, collect and compromise debts, and sell the real estate. *He alone can determine the need of and appoint a receiver.* The receiver must pay the moneys collected by him to the Treasurer of the United States, subject to the order of the Comptroller. * * * *All these questions are referred to his judgment and his discretion.*" (Italics added.)

In *Liberty Nat'l. Bank* v. *McIntosh* (C. C. A. 4th), 16 F. (2d) 906, it was stated that the jurisdiction of the Comptroller over insolvent national banks "in respect to all matters properly within his discretion is exclusive, and he is in respect thereto in no manner amenable to any court, nor is his action subject to review therein."

A particularly helpful decision on the jurisdictional question is *In re Manufacturers' Nat'l. Bank* (*supra*). That case (decided in 1873) arose upon an involuntary petition in bankruptcy filed against a national bank. It was held that the Bankruptcy Act did not apply to national banks, and that the bankruptcy court was without jurisdiction.

> "The bankrupt law is the latest expression of the legislative will, and its general terms and provisions must be held to repeal all previous statutes necessarily incompatible with it. The question then is, does the

bankrupt law repeal and supersede the provisions in the currency act for winding up the affairs of insolvent national banks? or can its provisions be applied to those corporations and leave intact the provisions of the currency act on the same subject?''

The court answered both questions in the negative, holding that the Bankruptcy Act neither repealed the insolvency provisions of the National Banking Act nor established a concurrent remedy. In concluding that Congress intended the provisions of the National Banking Act to be exclusive, the court stated in part:

> ''It will thus be seen that while the currency act does not specify in detail, and provide for all the specific acts of bankruptcy enumerated in the bankrupt law, it yet does furnish, through the functions of an important public officer—the comptroller of the currency—a very complete and detailed scheme or plan for administering the affairs of an insolvent national bank. It is true there is no provision for an individual creditor's putting this machinery in motion. But the presumption is that congress deemed it wiser to leave this duty to an impartial public officer rather than entrust it to the hasty, inconsiderate, and perhaps selfish action of one or more creditors. * * * At all events, the law as it was enacted contained ample and specific provisions for creating and managing these corporations, and for administering their affairs when they became unable or refused to perform their public functions.''

The Court held that the remedies given by the Bankrutcy Act and by the National Banking Act were not concurrent. One this point the Court stated:

> ''* * * such a construction would inevitably produce collisions and conflicts of jurisdiction, and the remedies given by the bankrupt act would be so far unavailing in regard to important assets as to make it evident that there was no intention to apply such a

> remedy. Suppose this court were to adjudge this respondent bankrupt to-day, and send its messenger and assignee to take possession of the assets, the officer of the court could in no event * * * obtain possession of the government bonds deposited to secure the circulation, or any surplus of those bonds after fully redeeming the circulation. Those assets are beyond the reach of this court or its officers, and can only be approached by the way of the comptroller and his receiver. Then why should this court take cognizance of a case that it cannot administer?
>
> "Why not, rather, say that congress has acted upon the subject matter of insolvent national banks and made specific provisions for administering their affairs, and, inasmuch as the general bankrupt law has not expressly repealed these specific provisions nor necessarily suspended them, the courts will presume it was the intention of congress to except this class of corporations from the operation of the later statute? Such conclusion seems to me consistent with authority, and is, in fact, the only conclusion that will not lead to inextricable complication and conflict."

Sharper "collisions and conflicts of jurisdiction" would result if the Ohio court should proceed with its attempted liquidation of the Knox Association.

The national bank (in the case just above referred to) had deposited collateral security for its circulating notes, which could be reached "only by the way of the comptroller and his receiver." The Knox Association has deposited collateral security for indorsed mortgages which can only be reached by way of the Farm Credit Administration and its receiver (12 U. S. C. § 964).

The Federal Land Bank holds the collateral deposited by the Association—nearly $25,000 in bank stock. If the Association is declared insolvent and placed in the hands of a receiver, the Bank must cancel this stock, and apply

the proceeds in the manner prescribed by the Act (12 U. S. C. § 964).

The Federal Land Bank is in a highly equivocal position. It is a party to the suit in which the Ohio court appointed a receiver to liquidate the Association. The Bank remains a party for the purpose of any further "orders in respect to the Receivership" which the court has reserved the right to issue. The Bank is bound by the decree enjoining interference with the court's receiver, and requiring that all assets of the Association be delivered up to him. (R. pp. 99-101.)

The Bank holds the principal asset of the Association—nearly $25,000 in bank stock. The court has ordered the Bank to surrender the asset. The Farm Loan Act prohibits such surrender, and directs the bank to liquidate the asset and retain the proceeds, to the extent necessary (1) to satisfy all debts owing by the association to the bank; and (2) to cover the contingent liabilities of the association for defaults under indorsed loans. The amount thus to be retained and the balance, if any, to be paid over to the association's receiver is to be determined upon agreement between the receiver and the bank, subject to the approval of the Farm Credit Administration. If an agreement cannot be reached, the determination must be made by the Land Bank Commissioner. (12 U. S. C. § 964.)

The court has authorized its receiver to collect and liquidate the assets of the Association, to deposit the proceeds in the Knox National Bank in Mt. Vernon; to "use, manage and conduct the business and affairs of the * * * association, in accordance with his best judgment and discretion * * * *to make payments and disbursements from moneys on hand or received* * * * to liquidate said corporation by collecting upon its assets, and by payment of its true debts and obligations, including the judgment of

the plaintiff herein * * *." (Italics added.) The Farm Loan Act directs the Association's receiver to deposit all funds with the Treasurer of the United States, subject to the order of the Farm Credit Administration. (12 U. S. C. § 962.)

The situation bristles with incipient jurisdictional controversies.

A careful search has disclosed only one case in which a court has appointed a liquidating receiver for a going national bank. This action (by a district court) was reversed by the Circuit Court of Appeals for the Third Circuit, in *Port Newark Nat'l Bank* v. *Waldron*, 46 F. (2d) 96.[7]

In *Hulse* v. *Argentsinger*, 12 F. (2d) 933, 935, the Court stated:

> "The statute confers upon the Comptroller of the Currency, when satisfied of the insolvency of a banking association, the right to appoint a receiver and * * * administer the assets * * *. This provision, it seems to me, plainly gives the Comptroller entire control of the insolvent bank * * *."

In *Pollard* v. *Bailey*, 20 Wall. 520, 527, this Court held that shareholders' double liability could be enforced only by the statutory receiver of a corporation, where the receiver had power to take such action. In its opinion the Court stated:

> "It [the shareholders' liability] was not only to be apportioned and collected, but the mode of apportionment and the manner of collection were specially provided for. The liability and the remedy were created by the same statute. This being so the remedy provided is exclusive of all others. A general liability created

[7] The Comptroller originally had no authority to take over a bank which had placed itself in voluntary liquidation and retired its circulating notes, such power being expressly given to the courts. In 1876, the Comptroller's authority was extended to such banks, and was held to be concurrent with the power previously invested in the courts alone. *King* v. *Pomeroy*, 121 Fed. 287.

by statute without a remedy may be enforced by an appropriate common-law action. *But where the provision for the liability is coupled with a provision for a special remedy, that remedy, and that alone, must be employed.*" (Italics added.)

The question has frequently arisen under state banking laws as to whether the courts of a state are deprived of jurisdiction to liquidate insolvent banks, by statutes which provide for administrative receiverships. An examination of such cases has failed to disclose a single instance in which the courts have assumed jurisdiction. On the contrary, the courts appear to hold uniformly that legislation of this character establishes a special tribunal for the winding up of state banks, and that the state courts have no jurisdiction except to remedy flagrant neglect or abuse of administrative authority. *In re Union Bank,* 204 N. Y. 313, 97 N. E. 737; *Cosmopolitan Trust Co.* v. *Suffolk Knitting Mills,* 247 Mass. 530, 143 N. E. 138; *Miracle* v. *Dixon,* 121 Okla. 180, 249 Pac. 153; *Green* v. *Smith,* 221 Ala. 484, 129 So. 92; *Abbott* v. *Morris,* 101 W. Va. 127; *Labette County Comm'rs* v. *Peterson,* 118 Kan. 560, 235 Pac. 848; *Cartmell* v. *Commercial Bank and Trust Co.,* 153 Ky. 798, 156 S. W. 1048; *Craughwell* v. *Mousam River Trust Co.,* 113 Maine 531, 95 Atl. 221.

There has been a recent legislative interpretation of the Federal Farm Loan Act which furnishes striking evidence of the intention of Congress to provide for an administrative liquidation, to the exclusion of judicial proceedings for that purpose. By the Farm Credit Act of [June 16] 1933, Congress provided for the establishment of a cooperative system of short-term credit institutions, known as production credit associations. §65 of that Act (12 U. S. C. §1038e) provides that, upon default of any obligation a production credit association

> "May be declared insolvent and placed in the hands of a receiver by the Governor [of the Farm Credit Administration] and *proceedings shall thereupon be had in accordance with the provisions of law relating to the insolvency of national farm loan associations.*" (Italics added.)

As passed by the House, this measure contained a provision conferring jurisdiction upon the Federal courts "in cases for winding up such corporations." This provision was stricken out of the bill upon the recommendation of the Senate Committee on Banking and Currency. In explanation of its recommendation, the Committee's report to the Senate stated: "winding up of such corporations and associations is not a judicial proceeding and therefore conferring jurisdiction on Federal courts in such cases would be inconsistent with section 65." (Senate Report No. 124, 73d Congress, 1st Session.) It is therefore apparent that, in providing for the liquidation of insolvent production credit associations, Congress acted upon the legislative interpretation of §29 of the Federal Farm Loan Act, that is: that the liquidation of a national farm loan association, by receivership, "is not a judicial proceeding."

Two circuit courts of appeal have indicated a similar view respecting the effect of §29 of the Act, in recent decisions relating to the administration of insolvent joint stock land banks.

> *Brusselback* v. *Chicago Joint Stock Land Bank, et al.*, (C. C. A. 7th) 69 F. (2d) 598, 599. "The conclusions reached were that the Federal Farm Loan Act contemplated that in case of the insolvency of the bank all of its estate and property, including its farm mortgages taken pursuant to the Act, should be administered by the receiver constituted as in the Act provided, under the general supervision of the Farm [Loan] Board."
>
> *Partridge* v. *St. Louis Joint Stock Land Bank* (C. C. A. 8th) 76 F. (2d) 237. "The [district] court held that

> the Farm Loan Act was a self-contained and comprehensive act governing, not only the organization, powers, duties, and functions of such banks but that it also fully provided for winding up and liquidation of insolvent farm loan organizations of all kinds, without the necessity of resorting to the courts save in exceptional circumstances."

In the last-quoted case, it is clear that the Court referred to the well-recognized principle that a court of equity may always act to correct the flagrant neglect or abuse of administrative authority. In the present case, there has been no showing of any condition warranting the application of that equitable principle.

In *Federal Land Bank* v. *Priddy* (*supra*), this Court considered the effect of §4 of the Federal Farm Loan Act, which grants to the farm credit corporations capacity "to sue and be sued * * * as fully as natural persons." In holding that these corporations are "subject to the incidents of suit, including attachment and execution", the Court placed considerable emphasis on the fact that, under a different interpretation of the law, judgment creditors would be "*relegated to a receivership, allowed as a matter of grace, as the sole means of collecting their judgments.*" In this connection the Court pointed out:

> "Section 29 provides that 'upon default of any obligation, Federal land banks [and national farm loan associations] * * * may be declared insolvent and placed in the hands of a receiver by the Farm Credit Administration * * *'. Except for §4, subjecting federal land banks to suit, * * * there is no other remedy provided for creditors * * * whose judgments are unpaid, and *the receivership is available only through the favorable action of the Farm Credit Administration.*" (Italics added.)

Thus it is apparent that both this Court and the Senate of the United States have indicated the view that the Farm

Loan Act prescribes the exclusive method by which national farm loan associations may be wound up—an administrative receivership, instituted at the discretion of the Farm Credit Administration and conducted under its direction and control. We earnestly submit that the courts below overstepped their jurisdictional limitations, in appointing a receiver to liquidate the Knox Association. Their action, if not reversed by this Court, would directly interfere with the functions of the Association as a Federal instrumentality—would result in dissolution of the Association, which, under the Act, may be accomplished only by Act of Congress or under the provisions of the Federal Farm Loan Act (12 U. S. C. §676, made applicable to national farm loan associations by 12 U. S. C. §716).

The courts below have assumed a prerogative of the Farm Credit Administration. Their action is a direct and immediate interference with the Farm Credit Administration, in the performance of its statutory obligation to supervise and regulate national farm loan associations, either solvent or insolvent. In a later section of this brief, we shall develop the proposition that the Farm Credit Administration has full authority under the law to apply appropriate regulatory measures, other than receivership, to associations which have met with financial difficulties and which, though presently unable to meet their debts without some impairment of capital, are expected to work out within a reasonable period of time. Even if that proposition were erroneous in whole or in part, and though the Farm Credit Administration might have exceeded its discretionary authority, such administrative error could not enlarge the jurisdiction of the court, or endow the State court with power to dissolve a Federal instrumentality.

The same provisions of law control the liquidation of land banks and national farm loan associations. Under the theory applied to this case by the courts below, it lies in the

power of any State court of general jurisdiction to suspend the activities of a Federal land bank, and to destroy that powerful instrumentality of the United States by means of a liquidating receivership. We earnestly submit that the theory of the court below is untenable, and that the judgment is an intolerable interference with the regulatory authority of the Farm Credit Administration—an interference which substitutes the receiver appointed by a State court for procedure adopted by the Farm Credit Administration as appropriate to the exigencies of this and similar cases.

6. The Farm Credit Administration has discretionary authority to appoint or not to appoint a receiver for an insolvent national farm loan association; and to permit an association to continue business operations, notwithstanding an impairment of its capital stock which appears to be temporary, provided the rights of stockholders and creditors are adequately protected.

This Court has determined that the National Banking Act confers discretionary authority upon the Comptroller, and does not require the suspension of business and the appointment of a liquidating receiver in all cases of insolvency. In *Easton* v. *Iowa* (*supra*), the Court reaffirmed the doctrine that a State cannot override the express provisions or the underlying policy of a Federal statute, and pointed out that it was the policy of the National Banking Act to permit the continuance of business by banks which were temporarily embarrassed, in cases where the Comptroller of the Currency deemed it advisable, and to vest the Comptroller with discretionary authority to wind up insolvent banks through receivership. On this point the court stated:

> *"There may be good reason to believe that, though temporarily embarrassed, the bank's affairs may take*

a fortunate turn. Some of the assets that cannot at once be converted into money may be of a character to justify the expectation that, if actual and open insolvency be avoided, they may be ultimately collectible, and thus the ruin of the bank and its creditors be prevented. McDonald v. *Chemical Nat. Bank,* 174 U. S. 610. But, under the state statute, no such conservative action can be followed by the officers of the bank except at the risk of the penalties of fine and imprisonment. *In such a case the provisions of the Federal statute would permit the Comptroller to withhold closing the bank, and to give an opportunity to escape final insolvency. It would seem that such an exercise of discretion on the part of the Comptroller would, in many cases, be better for all concerned than the unyielding course of action prescribed by the state law.* However, it is not our province to vindicate the policy of the Federal statute, but to declare that it cannot be overridden by the policy of the state." (Italics added.)

State courts have affirmed this same policy, upon construction of state banking laws. For example, *Valley Bank* v. *Malcolm,* 23 Ariz. 395, 204 Pac. 207 holds that the state's attorney general is not required to institute receivership proceedings immediately upon receipt of a report of insolvency from the bank comptroller, notwithstanding a statutory provision that it should be "the duty of the Attorney General, upon receiving such notification, to immediately commence suit in the proper court * * * ." In so construing the statute the court stated:

"The failure of a bank and the permanent closing of its activities and the winding up of its affairs through a receiver may in many instances be a public calamity, and the avoiding of such a result is not to be prevented unless the Legislature by the most unmistakable language has so enacted. If in the Attorney General's judgment the interest of the creditors of the bank and those interested in it might be best subserved by a reorganization * * *, there is nothing in the stat-

ute that prohibits such action, and nothing so mandatory in the direction given by the statute as to compel the Attorney General at all events to immediately commence an action which would result in the appointment of a receiver and the closing of the affairs of the bank in that manner."

Similar construction was placed on a Kansas statute providing that it shall be the duty of the bank commissioner to take charge of a state bank immediately upon insolvency, and to appoint a receiver forthwith. In *State* v. *Wilson*, 108 Kan. 641, 196 Pac. 758, the court approved the action of the bank commissioner in withholding receivership, stating:

> "Instead of at once closing the bank, however, the defendant [commissioner] merely exercised a careful supervision over it and within a short time sufficient funds were procured to put it upon a sound footing."

The policy of the foregoing cases has been applied to building and loan associations with impaired capital, which were insolvent within the peculiar meaning of that term as applied to cooperative membership corporations.

In the case of *Bettle, Com'r.* v. *Republic Sav. & L. Assn.*, 63 N. J. Eq. 578, 53 Atl. 11, 14, the Supreme Court of New Jersey stated that insolvency will not always justify the appointment of a receiver.

> "*If, in the earlier stages of its existence, a building and loan association should, by a loss which does not result from inexcusable mismanagement, have its assets reduced below the aggregate amount paid in by the shareholders, but it nevertheless seems probable that, while the life of its shares may be prolonged, they can be matured, I would not appoint a receiver.*" (Italics added.)

In the leading case of *Sjoberg* v. *Security Sav. & L. Assn.*, 73 Minn. 203, 75 N. W. 1116, 1119, it was held that

although there was no valid statute authorizing the voluntary liquidation of an association by its officers, the public examiner was acting within his powers in permitting such liquidation, since the examiner—

> "is given, by statute, express supervision of the affairs of the association; and, where it is not shown that it is reasonably necessary for a court of equity to take the affairs of the corporation into its own hands to protect the interests of the plaintiffs [dissenting shareholders], it will not appoint a receiver."
>
> "The complaint shows that the plaintiffs are not creditors of the defendant, in the usual meaning of the term, but simply stockholders of the defendant; and it makes no claim that the defendant owes anything except to its stockholders. * * * it is manifest that the defendant is insolvent only in the sense that it is impossible for the corporation to mature its stock according to its contract with its stockholders, and that its assets are not sufficient to pay back to such stockholders the money actually paid on their stock. *Where there are no general creditors or liabilities of the corporation except to its stockholders on account of their stock, such a depreciation of assets does not constitute 'insolvency' in the sense in which the word is used * * * [to justify] winding up a corporation on the ground of insolvency*".

Other cases in which the courts have refused to appoint liquidating receivers for building and loan associations, solely on the ground of insolvency, are: *People* v. *Union Bldg. & L. Assn.*, 127 Calif. 400, 58 Pac. 822; *Barton* v. *Enterprise L. & Bldg. Assn.*, 114 Ind. 226, 16 N. E. 486. See also 23 R. C. L. 25.

In the present case, an examination of this record shows the futility of a receivership for the purpose of affording relief to the Respondent. The Act provides (12 U. S. C. § 964) that upon the appointment of a receiver the stock

held by the Association in the Federal Land Bank of its district—

> "shall be canceled without impairment of its liability and all payments on such stock, with accrued dividends, if any, * * * shall be first applied to all debts of the insolvent farm loan association to the Federal land bank and the balance, if any, shall be paid to the receiver of said farm loan association: *Provided,* That *in estimating said debts contingent liabilities incurred by national farm loan associations * * * on account of default of principal or interest of indorsed mortgages, shall be estimated and included as a debt, * * * and the amount * * * shall be deducted in accordance with the provisions of this section from the amount otherwise due said national farm loan association for said canceled stock.*" (Italics added.)

The foregoing provision is plain and mandatory. When an association is placed in receivership, the Federal land bank must cancel all stock standing on its books in the name of the association. The proceeds of such stock must be applied, to the extent necessary, to satisfy all "debts" owing by the association to the bank. These debts will consist of deficiencies established by judgment, or otherwise, following default in the payment of indorsed loans, together with amounts owing under defaulted mortgages, for which the bank has made demand under 12 U. S. C. § 921.

The "contingent liabilities" of an association for "default of principal or interest of indorsed mortgages," which must be deducted from the proceeds of the association's stock in the bank, will consist of the sum total of all outstanding mortgage loans—unpaid principal and accrued interest—which had been indorsed by the Association.

From the inception of every loan made through an association there is a contingent liability for the full amount of such loan. The Association is required to pledge col-

lateral security with the Bank for 5 per cent of this contingent liability, in the form of capital stock purchased from the Bank. The Act forbids a bank "to receive from any national farm loan association additional mortgages when the principal remaining unpaid upon mortgages already received from such association shall exceed 20 times the amount of its [the Bank's] capital stock owned by such association." (12 U. S. C. § 791.) These provisions of the Act indicate the intention of Congress to require that every national farm loan association shall establish a guaranty fund equal to 5 per cent of its contingent liability as indorser of mortgage loans; that such fund shall be invested in stock of the bank and pledged with the bank; and that the fund shall be currently maintained at the same ratio—5 per cent—of the association's contingent liability for outstanding loans.

The congressional intention in this respect is proved beyond question of doubt upon reference to the debates which preceded the passage of the Act, and the reports of congressional committees which studied the measure. For example, it was stated by Senator Hollis, who had charge of the bill on the floor of the Senate, that—

> "there seems to be a consensus of opinion in running savings banks or mortgage institutions that there should be a guaranty fund of 5% of the obligations of the institution and that ratio has been adopted in this bill"; also—
>
> "it is recognized, all over this country and in Europe that in a land-mortgage system you should have a guaranty fund of 5 per cent. You may call it capital. We do in this instance"; also "in order to have a successful mortgage-bank system, it is necessary to have a guarantee fund to take up the slack of the bad loans. If you just loan money on the mortgages, and then put up the mortgages as security for an issue of farm-loan bonds, some day there will appear a bad mortgage and

you will not have anything to take that out of." (*C. R., 64th Cong., 1st Session, pp.* 6693, 6853.)

The Act requires an association to maintain a "guaranty fund" at the bank equal to 5 per cent of its contingent liability as indorser of outstanding loans. When an association is wound up, its invested guaranty fund must be liquidated, and the bank must retain a sufficient portion of the proceeds to set up a reserve of 5 per cent against the unpaid balances of outstanding loans made through the association. Of course, the bank must also retain a sufficient amount from this liquidated fund to establish an ample reserve against the anticipated loss from loans indorsed by the association, which have already gone to foreclosure. This is plainly imperative under 12 U. S. C. § 964, which requires the bank to retain a sum equal to the association's contingent liabilities.

If the Knox National Farm Loan Association were wound up today, it would receive nothing whatever from the liquidation of its principal asset—capital stock of the Federal land bank. This is apparent from the fact that the association's debts to the bank (including net contingent liabilities for defaults under indorsed loans) total $30,377.89,[*] against which the Bank holds a "guaranty fund" consisting of $24,660, in its own capital stock which was purchased and pledged by the Association. (R. pp. 72, 73.) This guaranty fund is equal to 5 per cent of the Association's gross contingent liability for outstanding loans. It would need to be increased by approximately $5,717.89 to satisfy the Association's liability for established losses under foreclosed loans, together with its liability for estimated losses under distressed loans. Therefore, if a receiver would be appointed to liquidate and wind up the Association, the Bank would be impelled to cancel the Association's stock, and retain the entire proceeds—$24,660.

[*] Total amount of Association's indebtedness to Bank, including net contingent liabilities, is reflected by table in Appendix to this brief—p. 89.

On the other hand, if the Association is not placed in receivership and wound up immediately, it may receive the entire proceeds of its guaranty fund, and may be able to pass on to its members sums aggregating approximately $25,000. An examination of the Association's condition, as reflected by the statement set forth on pages 72 and 73 of the record, shows that contingent liabilities are largely offset by corresponding assets. The major contingent liability (outstanding loans) is balanced by the personal liability of each borrower, and by the security which he has furnished in the form of a mortgage. The distressed items under contingent liabilities are largely offset by the Association's equities in real estate securing loans which have gone to foreclosure. The Association's total contingent liability for these items is $17,818.04, but the estimated loss is only $3,228.61. In the light of experience it is not at all over-sanguine to expect that, in the rising real estate market which prevails today in the vicinity of this Association, the estimated losses may never accrue, and may on the contrary develop into a profit which will erase the Association's fixed liability for established losses.

If this Association were wound up today, it would be obliterated. Nothing would be left for distribution to shareholders. This conclusion is inescapable upon an analysis of the Farm Loan Act, which is designed to—and does—establish a credit system founded upon cooperation by the borrowers, designed from the foundation up to insure the safety of investors from whom loan funds would be obtained through the medium of farm loan bonds.

The Act does not require the immediate liquidation of an association which has become insolvent. The provision which authorizes the appointment of a liquidating receiver is permissive—"the Farm Credit Administration *may*." Discretion, thus placed in the hands of the Administration,

is a two-edged sword. The Administration may cut the knot of insolvency with either blade which it selects: It *may* appoint a receiver; or it *may not* take such action, provided the rights of interested parties are preserved and safeguarded.

Receivership is an equitable remedy, and principles of equity must control an administrative agency, which has authority to liquidate quasi public corporations. In the present case it would be highly inequitable and unjust to the 179 shareholders of the Knox Association if their capital investment should be wiped out through an administrative receivership. There would be no gain to the single shareholder who is demanding such liquidation, since his investment, like all the rest, would go in the discard. The only party to be benefited would be the Association's single creditor, the Federal Land Bank. That creditor is willingly proceeding under a plan (Indemnity Agreement) satisfactory to it and to the Farm Credit Administration, for the gradual liquidation of the Association's liabilities. Therefore, the Administration is pursuing the just and equitable course of restricting the operations of this Association by prohibiting the dissipation of capital assets through payments to shareholders, and permitting the Association to continue in operation without a receivership.

We now come to the question of new business. Respondent complains that he is exposed to personal liability for losses which may result from new loans indorsed by the Association. This contention is unsound on two grounds. First, there is no personal liability imposed upon shareholders for any loans indorsed by the Association after June 16, 1933 (12 U. S. C. § 744a). Second, Respondent's personal liability for future debts was terminated when, by paying off his loan, he ceased to utilize the credit facil-

ities of the Association and did everything in his power to terminate his relationship as a shareholder. In *Apsey* v. *Kimball,* 221 U. S. 514, 523, this Court held that:

> "when the shareholders [of a national bank] made their election to retire at the end of the first twenty-year period of corporate organization, and took the steps required * * * they thereby ceased to be shareholders beyond the original twenty-year term of the life of the corporation, and they could neither share its profits, nor be compelled to bear its burdens."

Respondent further complains that his capital investment in the Association is imperilled by the indorsement of new loans. That contention is unsound. It must be presumed that each loan is made upon the security of farm land which has been appraised in the manner required by the Act; and that every precaution has been taken, as required by law, in the manner which was followed when respondent's own loan was originally made (see Appendix, p. 91 *et seq.*). It is true that the Association has assumed a contingent liability for each new loan. However, this liability is counterbalanced by the personal liability of the new borrower, by the lien of the mortgage upon his land, and by the purchase and pledge of new capital stock.

Experience has shown that the financial condition of a national farm loan association is subject to abrupt fluctuation. The likelihood of such fluctuation is inherent in the character and structure of the Association, and must be anticipated by any person who becomes a member thereof. The foreclosure of a single indorsed mortgage may result in an impairment of the Association's capital. Again, the successful liquidation of acquired real estate may eliminate or greatly reduce an existing deficit. An association does business chiefly with the Federal land bank of its district. With few and minor exceptions, the bank is its only creditor.

Debits and credits against the Association's account with the bank are, in large part, bookkeeping transactions.

An association is not always hopelessly insolvent when its debit balance with the land bank exceeds the assets which are presently available for liquidating the same. In the normal course of events, many associations suffer temporary impairments of their capital. Frequently, investigation indicates that an insolvent association may be expected to work out of its difficulties and restore its capital impairment within a reasonable length of time. The Farm Credit Administration and its predecessor, the Federal Farm Loan Board, have recognized this situation by permitting such associations to continue in active operation.

We earnestly submit that the foregoing policy conforms with the principles announced by this Court in *Easton* v. *Iowa* (*supra*), and that the policy has been properly applied to the Knox Association through withholding a liquidating receivership, and permitting the engagement in new business.

The policy of the Farm Credit Administration is neither novel, nor without legal precedent. As this Court pointed out in *Easton* v. *Iowa* (*supra*), it was incorporated in the National Banking Act, by virtue of the language employed by Congress. Years later, with knowledge of the interpretation placed on it by this Court, Congress adopted the same language in the Federal Farm Loan Act.

In 1928 the Federal Farm Loan Board issued a regulation providing for: (1) The classification of national farm loan associations according to their financial condition; (2) the continued operation of associations whose capital stock becomes impaired as the result of financial difficulties apparently temporary in nature; and (3) the gradual liquidation of hopelessly insolvent associations without resorting to receivership. (Appendix, p. 105.) Thereafter, the Board approved the form of Indemnity Agreement used in this

case. (R. p. 87.) The records of the Farm Credit Administration show that this form of agreement was adopted by banks and associations throughout the system, upon the recommendation of the Board, as a practical means of carrying into effect the policy of the regulation of 1928, and safeguarding the rights of the creditors and shareholders of associations with impaired capital.

This regulation, and the auxiliary procedure provided by the Indemnity Agreement were reported to Congress in the 13th Annual Report of the Federal Farm Loan Board for the year ending December 31, 1929. (For full text of that report, see appendix, page 107 et seq.) The regulation has remained in force and effect throughout the past eight years, and its provisions have been republished by the Federal Farm Loan Board and the Farm Credit Administration in handbooks issued to secretary-treasurers and directors of national farm loan associations, in handbooks containing instructions for national farm loan association examiners, etc. The regulation, unchanged except as to details of phraseology, is contained in the compilation of rules and regulations of the Farm Credit Administration, deposited with the Federal Register, pursuant to the requirements of the Federal Register Act. (44 U. S. C. §§ 301, et seq.) (For full text of regulation as deposited for publication in the Federal Register, see appendix, page 105 et seq.)

This regulation provides, in substance, that a national farm loan association may not pay off the stock of a retiring borrower at a time when it is unable to discharge its obligations to creditors from current assets, or to make adequate provision therefor. The regulation effectively prevents the Association from draining off capital assets by payments to shareholders, at a time when it is unable to satisfy creditors.

The Association's capital is invested in stock of the Federal Land Bank, and is pledged with the Bank as a "guaranty fund." The regulation prohibits the Bank from releasing any portion of this guaranty fund if the Association is believed to be hopelessly insolvent; and authorizes the Bank to retain the entire fund (for the time being, at least), in cases where insolvency appears to be temporary. If the Association makes adequate provision for the liquidation of debts which it cannot meet currently, the Bank may release portions of the guaranty fund by cash settlements for stock retired upon the payment of indorsed loans. Thus, an insolvent association is stripped of power to pay out its capital to shareholders, and the key to the situation is lodged with the association's creditor, operating within the terms of the regulation and under the strict supervision of the Farm Credit Administration. (For exposition of legal principles sustaining the Bank's right to retain the Association's pledged capital in this manner, see topic No. 3 of this Argument page 26 *et seq. supra*—particularly passage commencing on page 37.)

When this Respondent became a member of the Knox Association, the outstanding contracts of the organization extended far into the future. During the years which normally would intervene before his retirement from membership, the Association would admit new members and become liable for new loans. During those years the Association's financial condition would rise and fall with the fortunes of its members. In seasons of good crops and high prices, members would keep up the installment payments on their indorsed mortgages; but in seasons of local crop failure or low prices for the agricultural produce of the community, many of the Association's members would be unable to meet their installment payments, and defaults would pile up on the books of the Bank, followed by demands upon the Association to make good as required by 12 U. S. C. § 921. A

severe drought or flood or wind storm would bring seasonal insolvency upon the Association. Nevertheless, Respondent voluntarily became a member and assumed responsibilities of membership, together with the benefits of obtaining a low interest rate on a long-term loan.

He exercised his statutory option to pay off his loan many years before the final installment would have become due, and by the terms of the statute itself his payment was made "under the rules and regulations of the Farm Credit Administration." (12 U. S. C. § 771, Second.) He cannot now be heard to complain of the conditions imposed upon his withdrawal by such regulations, when he voluntarily brought himself within their provisions.

The position which Respondent has taken in the present suit is wholly inconsistent with his previous conduct. The record shows that 4 years before he filed this suit, the Association entered into an "Indemnity Agreement" with the Bank, providing for a gradual liquidation of obligations growing out of defaults under indorsed mortgages. This agreement expressly authorized the procedure of which Respondent now complains:—the retention of stock proceeds by the Bank, to indemnify it against loss upon the final liquidation of defaulted loans, and the postponement of immediate enforcement of the Association's liability for such loans. (R. pp. 87 *et seq.*—Ex. F.) Respondent did not plead ignorance of this agreement, and of the practice which was followed in pursuance thereof. Respondent did not show or attempt to show that he had ever protested against the arrangement during the four years when he was an active member of the Association.

Respondent was a member of the Association with full voting privilege during the years 1933-1935. He does not show that he made any attempt whatever as a member to curtail the activities of the Association in making new loans.

On the contrary, the record indicates that he sat by and permitted the directors of the Association, without objection on his part, to admit many new members and indorse new loans in excess of $100,000, during this period. Notwithstanding this inaction on his part, he now comes into court and asks for a judicial decree which will terminate the life of the Association, and cause its immediate and complete dissolution. He bases his demand largely upon the fact that the Association has made the new loans to which he did not object.

In permitting an association to accept new business, though its stock is subject to some impairment, the Farm Credit Administration confines this privilege to associations apparently "able to work out of their difficulties within a reasonable time." For the purpose of determining what is a reasonable time, it is necessary to bear in mind the nature of the Association's business. That business is to obtain long-term loans for its members from the Federal Land Bank. No such loan may be written with a final payment date of less than five years. In actual practice, the great majority of loans have been amortized for periods of more than 30 years. As of January 1, 1924, no loans had been written for a term of less than 30 years.[9] As of December 31, 1929, 95.5% (in amount) of all outstanding loans had been made for terms of more than 30 years.[10] During the period of greatest lending activity in the history of the Federal land bank system (May 1, 1933-September 30, 1934), 78.2% (in amount) of loans made were amortized for terms of more than 30 years, and 17.4% for terms of

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[9] Department of Agriculture Bulletin No. 288—"Farm Mortgage Credit", February, 1932—page 77.

[10] Data assembled by Federal Farm Loan Board, and included in letter addressed to Alexander Brown and Sons by the acting Farm Loan Commissioner under date of April 22, 1930.

20 years.[11] In such business, time moves slowly, and "reasonable time" is not a matter of days.

We have already demonstrated that if the Knox National Farm Loan Association should be wound up today, there would be no assets available for distribution to shareholders. Even if this were not true, and if some assets would be available for that purpose, we submit that respondent would not be entitled to demand the dissolution of the Association, or the cessation of new business, merely on the ground of insolvency. As was stated regarding a private corporation in *Sutton Mfg. Co.* v. *Hutchinson* (C. C. A. 7th), 63 F. 496, 501:

> "A corporation is not required by any duty it owes to creditors to suspend operations the moment it becomes financially embarrassed, or because it may be doubtful whether the objects of its creation can be attained by further effort upon its part. *It is in the line of right and of duty when attempting, in good faith, by the exercise of its lawful powers and by the use of all legitimate means, to preserve its active existence, and thereby accomplish the objects for which it was created.*" (Italics added.)

The Association is a quasi-public corporation—an instrumentality of the Government. Congress evidently believed that the interests of the public do not necessarily require the immediate liquidation of an insolvent association. This belief is apparent, both from the permissive language used in authorizing the appointment of a receiver, and from the proviso which prohibits any receivership "until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Fed-

[11] Second Annual Report of the Farm Credit Administration (1934), page 103, table 10.

eral land bank district, unless such association shall have been in default for a period of two years." (12 U. S. C. §961.)

In a single sentence, Congress gave sweeping authority to wind up an association upon failure "to meet its outstanding obligations of any description" and limited that power by a proviso which, at first glance, appears wholly irrelevant. The purpose of this limitation becomes apparent upon study, and furnishes a significant guide to the interpretation of the statute.

This proviso forbids the stringent remedy of receivership, except when necessary for the protection of the Federal Land Bank—the common creditor of all associations in its district—from the danger of loss through an accumulation of defaults under indorsed mortgages. Unless and until such defaults constitute a substantial item on the books of the Bank, and a resultant threat to the safety of bonds issued against indorsed mortgages, the Farm Credit Administration is without power to wind up a single insolvent association. *The power to liquidate an association is not based primarily upon its individual financial condition, but rather upon the necessity of safeguarding the bank in cases where the defaults of that association and others in the district have imperiled the financial condition of the bank.*

This proviso shows congressional recognition of the fact that receivership would, in most cases, wholly obliterate an association. It shows that Congress expected individual associations to become financially embarrassed, and to continue operations notwithstanding temporary inability to meet their debts. It shows that Congress desired the associations of each district to be given an opportunity to work out of their difficulties, and that individual associations should be wound up only where the Farm Credit Administration deems such action necessary for the welfare of the

district as a whole: The Farm Credit Administration, and its predecessor, the Federal Farm Loan Board, have administered the Act in accordance with this basic principle.

The Knox Association is operating under a regulation which is well adapted to the long-time aspect of a national farm loan association. The regulation enables the Association to continue its business on a restricted basis, and to conserve capital assets during a period of financial distress. Pending the Association's expected rehabilitation, the regulation insures full protection to its only creditor, the Federal Land Bank, together with old and new stockholders. The fundamental principle underlying the regulation is identical with that affirmed in *Easton* v. *Iowa* (*supra*).

We earnestly submit that the Farm Credit Administration has full and ample authority to enforce the regulation in question, as an appropriate and reasonable means of accomplishing the result for which a liquidating receivership is authorized, and that the courts below had no power to interfere with the application of the regulation to the petitioner Association.

Conclusion.

Respondent voluntarily became a member of the Federal Land Bank System, by joining its local unit, the Knox National Farm Loan Association. For years, Respondent enjoyed the benefits of membership—long-term credit at low interest. Respondent may not now evade the responsibilities which he undertook in joining the system, either by withdrawing his capital from the Association during its present financial difficulty, or by procuring a dissolution of the Association, merely because his own artive participation is at an end.

Congress, in the exercise of its constitutional powers, established the Federal Land Bank System. Congress has

exclusive power to provide for the regulation of the institutions comprising the system. Congress has dealt directly with the subject of the insolvency of these institutions, and has made full and adequate provision for the protection of creditors of the system. It is not competent for a state court to interfere with the system by appointing a receiver for its unit, the Knox National Farm Loan Association, and thereby obstructing the exercise of the powers bestowed upon the system by the general government.

We respectfully submit that, for the reasons stated in this brief, the decision of the court below should be reversed.

Respectfully submitted,

ROGER D. BRANIGIN,
Louisville, Kentucky;
PEYTON R. EVANS,
GERALD E. LYONS,
MAY T. BIGELOW,
Washington, D. C.,
Attorneys for Petitioners.

Of Counsel:
JOHN M. RANKIN,
Columbus, Ohio.

	Debits with no contingent liabilities.	Debits and gross contingent liabilities.
...ciation to Bank.		
...ment by the Bank on liabili... ...ing two loans ...ciation, with inter... ...date of the trial	$2,489.28	$2,489.28
...ciation will ...ns of (c) and (d) ...for stock proceeds with... ...by the Bank ($325.00)	3,228.61	
	($5,717.89)	
...) contingent liability.— ...(principal and interest ...foreclosure costs, etc.) in three ...of real estate, which had se... ...secured by the Associa...		$11,074.33
...contingent liability.— ...principal and accrued interest of ...loans in foreclosure		6,743.71
...contingent liability.— ...amount of outstanding ...by Association (the un... ...loans was not as... ...total, but it is fair to ...the total has not been sub... ...by payments on		493,200.00
...liability.— ...by Association by Association (c) indorsed	$24,000.00	
.....	*$30,577.89	$513,507.32

...Indebtedness to Bank, including net ...from sales of stock

APPENDIX

TABLE

Chronological Statement of Facts.	Applicable Provisions of Federal Farm Loan Act (References to United States Code).
November 5, 1924.	12 U. S. C. § 733.
Application was made through the Association, in writing, for a Federal land bank loan of $5,300. The applicants (Roberts et al.) offered as security a first mortgage on farm land located in Knox County, Ohio. The applicants subscribed "for the amount of capital stock in said association that this loan will involve under the terms of the Federal Farm Loan Act"; and in stating the objects to which the proceeds of the loan would be applied, the applicants included payment for said stock in the Association. (R. pp. 77-84.)	"Any person desiring to borrow on farm land mortgage through a national farm loan association * * * shall subscribe for shares of stock in such farm loan association to an amount equal to 5 per centum of the face of the desired loan, said subscription to be paid in cash upon the granting of the loan."
	12 U. S. C. § 771, Eighth.
	"Every applicant * * * shall make application on a form to be prescribed for that purpose by the Farm Credit Administration, and * * * shall state the objects to which the proceeds of said loan are to be applied."

Chronological Statement of Facts—Continued.

November 5, 1924.

The investigator for the Association's loan committee investigated the property, its earning power under normal conditions, and the solvency, character and qualifications of the applicants. The investigator reported, in writing, recommending a loan for an amount not to exceed $7,950. (R. p. 85.)

Applicable Provisions of Federal Farm Loan Act (References to United States Code)—Continued.

12 U. S. C. § 742.

"Any person desiring to secure a loan through a national farm loan association * * * may * * * borrow from the Federal land bank through such association the sum necessary to pay for shares of stock subscribed for by him in the national farm loan association, such sum to be made a part of the face of the loan and paid off in amortization payments."

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12 U. S. C. § 751.

"Whenever an application for a mortgage loan is made through a national farm loan association, the loan committee * * * shall forthwith make, or cause to be made, such investigation as it may deem necessary as to the character and solvency of the applicant, and the sufficiency of the security offered, and cause written report to be made of the result of such investigation."

November 8, 1924.

The loan committee unanimously approved, in writing, the report and recommendation of its investigator. (R. p. 85.)

12 U. S. C. § 751.

The loan committee "shall, if it concurs in such report [of the investigation which it has caused to be made], approve the same in writing. No loan shall be made unless the report is favorable, and the loan committee is unanimous in its approval thereof."

November 29, 1924.

The Association's board of directors considered the application, and recommended to the Bank that a loan be granted to the applicants in an amount not exceeding $7,950, on the land tendered as security; and by a vote of two-thirds or more, the board of directors admitted the applicants to membership in the Association. (R. p. 85.)

12 U. S. C. § 745.

"any person who is the owner * * * of farm land qualified * * * as the basis of a mortgage loan, and who desires to borrow on a mortgage of such farm land, may become a member of the association by a two-thirds vote of the directors upon subscribing for one share of the capital stock of such association for each $100 of the face of his proposed loan * * *."

Chronological Statement of Facts—Continued.

November 29, 1924.

The application, together with the written report of the Association's loan committee and a record of the action taken by its board of directors thereon, were submitted to the Bank by the Association. (R. pp. 9, 43.)

December 4, 1924.

The application and the report of the Association's loan committee were referred to a land bank appraiser. (R. pp. 9, 86.)

January 6, 1925.

The land bank appraiser made a written report of his investigation of the land offered as security,

Applicable Provisions of Federal Farm Loan Act (References to United States Code)—Continued.

12 U. S. C. § 752.

"The written report [of the Association's loan committee] * * * shall be submitted to the Federal land bank, together with the application for the loan, and the directors of said land bank shall examine said written report when they pass on the loan application which it accompanies, but they shall not be bound by said appraisal."

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12 U. S. C. § 753.

"Before any mortgage loan is made by any Federal land bank, * * * it shall refer the application and written report of the loan committee to one or more of the land bank appraisers appointed under the authority of [12 U. S. C.] section 656."

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12 U. S. C. § 753.

"* * * such appraiser * * * shall investigate and make a written report upon the land

and recommended favorably upon the application for a loan. (R. pp. 9, 86.)

January 10, 1925.

The Bank, by its executive committee, approved the application for a loan of $5,300, subject to requirements as to insurance upon the property. (R. p. 86.)

May, 1925

The borrowers (Roberts et al.) executed and delivered to the Federal Land Bank of Louisville their promissory note for the principal sum of $5,300, with interest at the rate of 5½ per cent per annum, payable in accordance with amortization tables promulgated by the Federal Farm Loan Board, in 68 semi-annual installments of $171.25, on the first of January and July of each year to and including 1959, and a final payment of $171.77, payable on the first day of January, 1960. The note reserved to borrowers the privilege of making additional payments for the reduction or satisfaction of principal, on any installment date after five years from the date of said note.

offered as security for said loan. No such loan shall be made by said land bank unless said written report is favorable."

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12 U. S. C. § 771, Ninth.

"Every borrower shall undertake to keep insured * * * all buildings the value of which was a factor in determining the amount of the loan."

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12 U. S. C. § 771, First.

Loans made by a Federal land bank "shall be secured by duly recorded first mortgages on farm land."

12 U. S. C. § 771, Second.

"Every such mortgage shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual installments sufficient to cover * * * interest * * * and * * * such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years:

Chronological Statement of Facts—Continued.

At the same time, the applicants executed and delivered to the Bank a first mortgage upon their farm land, which was duly recorded. (R. pp. 9, 29, 32.)

May, 1925.

The Association indorsed and became liable for said note, before delivery to the bank. (R. pp. 11, 32A.)

Applicable Provisions of Federal Farm Loan Act (References to United States Code)—Continued.

Provided, That after five years from the date upon which a loan is made the mortgagor may, upon any regular installment date, make in advance any number of payments or any portion thereof on account of the principal of his loan * * * or pay the entire principal of such loan, under the rules and regulations of the Farm Credit Administration."

12 U. S. C. § 662.

The Farm Credit Administration (formerly Federal Farm Loan Board) "shall prepare and publish amortization tables which shall be used by national farm loan associations and land banks."

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12 U. S. C. § 761.

"Every national farm loan association shall have power * * * to indorse, and thereby become liable for the payment of, mortgages taken from its shareholders by the Federal land bank of its district."

May, 1925.

At the time of the execution and delivery of the promissory note and mortgage and the closing of the loan evidenced and secured thereby, the following transactions occurred:

The borrowers paid for 53 shares of capital stock in the Association (at $5.00 per share) for which they had subscribed in their loan application;

Said stock was held by the Association (which had indorsed and become liable for the mortgage) as collateral security for the payment of the loan; and

The Association, in turn, paid for 53 shares of capital stock, in the Bank (at $5.00 per share), and the Bank held said stock as collateral security for the payment of the indorsed loan. (R. pp. 11, 12, 53, 74.)

12 U. S. C. § 733.

The applicant's stock subscription shall "be paid in cash upon the granting of the loan. * * *

"Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding."

12 U. S. C. § 721.

"Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district it shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan,

Chronological Statement of Facts—Continued.

May, 1925.

The Bank transmitted the net proceeds of said loan to the Association, after deducting authorized fees and charges; and the Association then paid over said net proceeds, less its authorized fees and charges, to and/or for the account of the borrowers, Roberts et al. Before transmitting the loan proceeds to the Association, the Bank deducted the par value of the shares of stock which were purchased and pledged by the Association in connection with said loan; and the Association, in turn, issued its stock to the borrowers. (R. pp. 11, 12.)

Applicable Provisions of Federal Farm Loan Act (References to United States Code)—Continued.

but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding."

12 U. S. C. § 693.

"Stock [of a Federal land bank] held by national farm loan associations shall not be transferred or hypothecated, and the certificates therefor shall so state."

12 U. S. C. § 761.

"Every national farm loan association shall have power * * *. To receive from the Federal land bank of its district funds advanced by said land bank, and to deliver said funds to its shareholders on receipt of [qualified] first mortgages * * *. To fix reasonable initial charges to be made against applicants for loans and to borrowers in order to meet the necessary expenses of the association * * *."

October, 1927.

Respondent purchased the Knox County farm from the original borrowers (Roberts et al.), and assumed and agreed to pay the mortgage held by the Bank. At the same time, and as a part of the same transaction, Respondent purchased from his vendors their shares of stock in the Association. By a written instrument dated October 10, addressed to the Bank, Respondent expressly "*assumed all the liabilities of membership*" incident to the purchase of said stock and the assumption of said loan. Respondent was duly elected to membership in the Association, and the Association's action was certified to the Bank by its secretary-treasurer on October 24. The Bank acquiesced in the entire transaction. (R. p. 39.)

12 U. S. C. § 771, Sixth.

"In case of the sale of the mortgaged land, the Federal land bank may permit said mortgage and the stock interests of the vendor to be assumed by the purchaser."

12 U. S. C. § 744.

"Shareholders of every national farm loan association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

12 U. S. C. § 744a.

"* * * shareholders * * * shall not be held individually responsible for any contract, debt, or engagement of such association entered into after June 16, 1933, but this section shall not be construed to relieve any other liability with respect to stock held by such shareholders."

Chronological Statement of Facts—Continued.

October 24, 1927.

The Association executed and delivered to Respondent a written instrument designated "receipt for stock held by Knox National Farm Loan Association." This instrument recited that a certificate for 53 shares of the Association's stock had that day been issued to Respondent, and that the stock was being held by the Association "pursuant to the provision of the Federal Farm Loan Act as collateral security for the payment of the loan"; also, that it "represents your investment in stock on which dividends will be paid. It will be accepted at face value on final payment of the loan." (R. p. 71.)

November, 1928.

The Federal Farm Loan Board adopted a regulation, providing for the classification of national farm loan associations with respect to their financial condition, and prescribing the procedure which should be followed, upon the repayment of

Applicable Provisions of Federal Farm Loan Act (References to United States Code)—Continued.

12 U. S. C. § 733.

"Said capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding."

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12 U. S. C. § 831.

"The Farm Credit Administration [formerly Federal Farm Loan Board] shall have power—

"(i) To exercise general supervisory authority over the Federal land banks, the national farm

loans, in connection with the retirement of the capital stock of the Federal land banks, and the associations of different classifications. (Appendix to this brief, page 105.)

The regulation of the Federal Farm Loan Board respecting stock retirement has been continued in force and effect by the Farm Credit Administration.

March, 1931.

The Association and the Bank agreed upon a method for liquidating obligations incurred by the Association as indorser of mortgage loans. The agreement provided, in substance, that where the Bank should acquire the real estate which had secured an indorsed loan, such property should be administered and sold for the mutual benefit of the Bank and the Association, and that the

Chronological Statement of Facts—Continued.

ciation's liability as indorser should not be determined by the price bid at foreclosure sale, but by the net loss, if any, sustained upon the final disposition of the property; also, that the Association should be credited with any net profits realized from the sale of such acquired property, to the extent necessary to balance the Association's account with the Bank. It was further provided that: "For the purpose of securing the performance of this agreement, all or any portion of dividends which may be declared upon the Bank's stock recorded in the name of the Association, * * * and any sums, including the proceeds of retired stock, which might otherwise be payable by the Bank to the Association, may to the extent deemed necessary by the Bank, be retained by it as a Real Estate Indemnity Account, against which account shall be charged the actual losses, if any, sustained by the Bank on account of the operation, maintenance or disposition * * * of any such lands, * * * when such losses are ascertained * * *." (R. p. 87.)

Applicable Provisions of Federal Farm Loan Act (References to United States Code)—Continued.

amount unpaid thereon in cash or by the substitution of an equal amount of Federal farm loan bonds, with all unmatured coupons attached."

March, 1933.

The unpaid balance of the loan involved in this suit had been reduced to $2,122.46 (principal and accrued interest). Respondent made the following tender, as in full satisfaction of said sum: $1,857.46 in cash, together with his receipt for Association stock (par value of $265). The Bank rejected said tender and returned the check and stock receipt to the Association.

At the date of said tender and at all times since, the Association has been in "Class 2"—that is, its capital stock has been impaired, due to its inability to meet, from current assets, its obligations to the Bank as indorser of defaulted mortgage loans, although it is believed that such impairment

12 U. S. C. § 771, Second.

"Every * * * mortgage [accepted by a Federal land bank] shall contain an agreement providing for the repayment of the loan on an amortization plan by means of a fixed number of annual or semiannual installments sufficient to cover * * * interest * * * and * * * such amounts to be applied on the principal as will extinguish the debt within an agreed period, not less than five years nor more than forty years: *Provided,* That after five years from the date upon which a loan is made, the mortgagor may * * * make in advance any number of payments or any portion thereof on account of the principal of his loan as provided by his contract or pay the entire principal of such loan, under the rules and regulations of the Farm Credit Administration."

Regulation of Farm Credit Administration, Respecting the Retirement of the Capital Stock of Federal Land Banks and National Farm Loan Associations

(Appendix, pages 91-117, *et seq.*)

Chronological Statement of Facts—Continued.

is temporary. The Association has, therefore, been unable to pay off the stock of retiring members.

April, 1933.

Respondent paid to the Bank, through the Association, the sum of $1,857.46, which the Bank applied to the mortgage loan, leaving an unpaid balance of approximately $265. (R. pp. 12, 47.)

August, 1934.

Respondent brought this suit against the Bank and the Association in the Court of Common Pleas of Knox County, Ohio, following repeated demands upon the Bank and the Association, that Respondent's receipt for Association stock be accepted in full satisfaction of the unpaid balance of said loan. (R. p. 4.)

APPENDIX.

Excerpt from "Federal Register Compilation" of Rules and Regulations of Farm Credit Administration, Respecting Federal Land Bank System.

RETIREMENT OF THE CAPITAL STOCK OF FEDERAL LAND BANKS AND NATIONAL FARM LOAN ASSOCIATIONS

SECTION 19.—*Retirement in the case of repayment of loans (effective November,* 1928; *as amended May* 13, 1935, *December* 16, 1935).*

(a) Each Federal land bank shall establish a practical procedure for carrying out the provisions of the Federal Farm Loan Act, as amended, with respect to the retirement of the capital stock of the Federal land banks and national farm loan associations in the case of repayment of loans. In making a specific application of the general legal principles of stock retirement to the problems presented by the individual associations in its district, each bank should classify such associations with respect to their financial condition, on the following general basis: (1) Associations able to meet their obligations currently and free from distressed loans are to be placed in class 1; (2) associations apparently unable to meet their obligations currently without a present impairment of their capital, but, in the opinion of the bank, able to work out of their difficulties within a reasonable time, are to be placed in class 2; (3) associations unable to meet their obligations currently without a material impairment of their capital, although to an extent not

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[12] Various aspects of this subject are developed in more detail in an opinion [by Peyton R. Evans] entitled "Retirement of Stock of National Farm Loan Associations and Federal Land Banks in Case of Repayment of Loans' (Treasury Department, Federal Farm Loan Bureau, 1928), officially adopted by the Federal Farm Loan Board as a regulation, and on pages 27 to 33 inclusive of "A Handbook for Officers and Directors of National Farm Loan Association" (Government Printing Office, 1935) issued by the Farm Credit Administration. The contents of that opinion and the pages of the hand-book referred to are incorporated herein and made a part hereof, and are available for inspection at the Farm Credit Administration at Washington, D. C.

exceeding the aggregate amount thereof, and, in the opinion of the bank, unable to work out of their difficulties within a reasonable time, are to be placed in class 3; (4) associations whose unsatisfied obligations equal or exceed the amount of their capital are to be placed in class 4.

(b) When a borrower pays his mortgage debt in full and the national farm loan association through which the loan was made is in class 1, the bank shall pay off at par and retire the stock standing on its books in the name of the association, which was subscribed for by it at the time the loan was made, and shall pay the par value of such stock to the association. In that event, the association shall pay to the retiring borrower the par value of said stock less any personal indebtedness of such borrower to the association; provided, however, that the bank may, upon the order and with the consent of the association, credit the par value of such stock upon the retiring borrower's mortgage.

(c) Where the association is in class 2, the bank after retiring its stock may, in its discretion, pay to the association all or a portion of the proceeds of such retired stock. If the bank pays to the association in cash a portion of the proceeds of its retired stock, the association may pay the retiring stockholder a similar amount, less any personal indebtedness of the borrower to the association, in full settlement of the value of his stock. If, however, the bank elects to retain all the proceeds of its retired stock, the association, unless it has other funds available may not make a payment to the retiring borrower until it has paid, or has made adequate provision for paying, its indebtedness to its creditors and has sufficient funds available for distribution among its former shareholders on a pro rata basis. In such cases the association may issue to each retiring borrower a certificate which would recite, in effect "that the holder of this certificate is entitled to share pro rata on the basis of — shares of capital stock of the aggregate par value of $——, of the —— National Farm Loan Association of ——, in the distribution of the net proceeds of all its capital stock after all of its indebtedness has been satisfied.

(d) Where the association is in class 3 or 4, the bank shall retain the full amount of the proceeds of such retired stock and apply the same as a credit on the debts due by such association to the bank. In such cases, the association may issue to each retiring borrower a certificate in the form indicated in the preceding paragraph.

(e) An association in class 1 may, unless disqualified for some other reason, accept applications for loans. When an application for a loan is presented to an association in class 2, the secretary-treasurer shall advise the applicant, before the application is accepted, that the par value of the stock which he will be required to take may be, or may become, impaired through losses on account of defaults in other loans, and that it may not be possible for the association to repay the par value of the stock when the loan is paid off. Associations in classes 3 and 4 shall not be permitted to accept applications for loans.

APPENDIX.

Excerpt From 13th Annual Report of the Federal Farm Loan Board, for the Year Ending December 31, 1929.

RETIREMENT OF STOCK OF FEDERAL LAND BANKS AND NATIONAL FARM LOAN ASSOCIATIONS.

During the past two years there has been an important clarification of policy and procedure in connection with the determination of the conditions under which the capital stock of Federal land banks and national farm loan associations should be retired in accordance with the provisions of the farm loan act. Under the law, stock of a Federal land bank owned by associations may, in the discretion of the bank's directors and with the approval of the Farm Loan Board, be paid off at par and retired, and it must be so paid off and retired upon full payment of the mortgage loan. In such case—i.e., upon full payment of the loan—the national farm loan associations must pay off at par and retire the corresponding shares of its stock which were issued

when land bank stock was issued. Certain other requirements and objectives of the law made it necessary, however, to define carefully the conditions under which such stock may be retired and to work out a uniform and equitable procedure that would carry out the theory and purpose of the act and respect the rights and obligations of all concerned.

Stock of the Federal land banks is owned by the national farm loan associations; the stock of national farm loan associations is owned by the borrowers. Each association indorses and thereby becomes liable for the payment of all qualified first mortgages securing loans made by the Federal land bank to its members. By such indorsement the association becomes primarily liable with the borrower for the payment of the whole mortgage debt. The Supreme Court of the State of Washington has held that when a loan is made to a borrower through an association the association becomes a joint borrower with the applicant.

Section 25 of the law sets forth specifically the extent of the association's liability on its indorsement for defaults occurring in connection with loans made to its members. That section reads:

If there shall be default under the terms of any indorsed first mortgage held by a Federal land bank under the provisions of this title, the national farm loan association through which said mortgage was received by said Federal land bank shall be notified of such said default. Such association may thereupon be required, within 30 days after such notice, to make good such default, either by payment of the amount unpaid thereon in cash or by the substitution of an equal amount of Federal farm loan bonds, with all unmatured coupons attached.

Under this provision, the bank may give notice to the association that there has been a default in the payment of any indorsed first mortgage and within 30 days from the date thereof may require the association to make good such default. In other words, the bank may require the association to pay the note before exhausting its rights under the mortgage.

The responsibility of the shareholders for the payment of these obligations is provided for in section 9 of the Act:

Shareholders of every national farm loan association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares.

In other words, shareholders of a national farm loan association are equally and ratably responsible, to the extent stated, for all contracts, debts, and engagements of the association "in addition to the amount paid in and represented by their shares." Therefore, the assets represented by the stock must be held liable for all contracts, debts, and engagements of the associations. This provision of the law is incorporated in extenso in the by-laws of every national farm loan association, and by this action each association has recognized that the stock held by its members is liable for the debts incurred by it in the course of its business operations.

Section 29 of the act provides that, upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description, the farm loan board, under the conditions stated in the act, may forthwith declare such association insolvent and appoint a receiver. That section also states that, when an association is declared insolvent under its provisions, the land bank must cancel the stock of the bank owned by the association and apply the proceeds to all debts of the insolvent association. In this connection, the courts have repeatedly held, in cases of building and loan associations, that if an association has failed to meet its outstanding obligations of any description, or is in such a condition that it is impossible for it to meet such obligations or to pay back to stockholders the amount of their contributions dollar for dollar, a retiring borrower is not entitled to the face value of his stock or to have the face amount applied as a credit on his mortgage debt. This is the rule adopted by the Federal courts. These well established principles

of the general law apply with equal force to cases where national farm loan associations have failed to meet their obligations. In such cases, a retiring member-borrower is not entitled to the face value of his stock in his association.

As previously pointed out, the act provides that, upon full payment of a mortgage loan, the bank must pay off at par and retire the stock standing on its books in the name of the association which was pledged with the bank as collateral security for the payment of said loan. It must be borne in mind that this transaction is with the association, not the borrower. This provision makes the bank liable to the association for the par value of the stock. If at the same time the association, as indorser of a defaulted loan, has failed to make good such default in accordance with the provisions of section 25 hereinbefore referred to, and is indebted to the bank, the mutual demands of the bank and the association, under universally established principles of law, may be set off one against the other. This right is not dependent upon any formal determination of insolvency of the association, but is a right incident to the relationship of creditor and debtor arising under the association's indorsement of the loans made to its members. Where, therefore, a borrower seeks to pay off his loan through an association that is unable to meet its obligations as indorser, the bank, while retiring its stock owned by the association, must of necessity withhold the payment to the association of all or a portion of the proceeds of such stock and offset such proceeds against the association's indebtedness to it. In such circumstances the association in turn retires the stock standing on its books in the name of the borrower, but the borrower-stockholder is entitled only to his pro rata share of the value of the capital assets of the association after provision has been made for the satisfaction of its obligations. If the bank pays to the association in cash a portion of the proceeds of its stock, the association in turn may pay the borrower-stockholder a similar amount in full settlement of the value of his stock, unless he is personally indebted to the association, in which event the amount involved would be offset against such indebtedness. If, however, the bank finds it necessary to retain all the proceeds of its retired

stock on account of the association's indebtedness to it, the association, unless it has other funds available, is not in a position to pay its borrower-stockholder, but in such case he is entitled to share pro rata in the distribution of the net proceeds, if any, of the association's capital assets after its indebtedness has been satisfied.

On the other hand, if an association has met all its obligations currently, including its obligations as indorser, at the time one of its members pays off his loan in full, he is entitled to receive the par value of his stock provided he is not personally indebted to the association, in which case all or so much of the proceeds of such stock as may be necessary are offset against his indebtedness.

Clearly any statement made in forms of stock receipts or otherwise, to the effect that the shares are to be paid off and retired at par upon the repayment of loans presupposes the solvency of the association issuing such shares and its continued ability to meet its obligations currently. This is true, for example, with respect to certificates of deposit issued by commercial banks which purport to be absolutely payable under certain specified conditions with interest at an agreed rate. These certificates are issued in good faith, but their redemption, as everyone is presumed to know, is subject to the necessarily implied condition that should the bank suspend operations before the money is withdrawn the depositor will be entitled to payment thereof only if and to the extent that the assets of the bank are sufficient for the purpose.

In the consideration of this subject, the significance of the requirement in section 7 that "the capital stock of a Federal land bank shall not be reduced to an amount less than 5 per cent of the principal of the outstanding farm loan bonds issued by it," should not be overlooked. The reasons prompting the Congress to insert this provision in the act may be explained by reference to the report of the joint committee of the Senate and House, recommending to the Sixty-fourth Congress a bill providing for an agricultural credit system adapted to the needs of the American farmer. In this report the general plan of the present

farm loan system was outlined and it contained the following remarks:

Every farm loan bond is secured as follows:

1. By the capital, reserves, and earnings of the land bank which issues it.

2. By the capital, reserves, and earnings of the 11 other land banks.

3. By the collective security of all the mortgages in its division (limited or unlimited) of the land bank, the mortgages pledged being at least equal in amount to the outstanding bonds.

Every mortgage pledged as collateral is secured as follows:

1. By the personal undertaking of the borrower.

2. By the security of the mortgaged land, at least double in value to the amount of the loan.

3. By the capital, reserves, and earnings of the local association, indorsing the loan.

4. By the individual liability of the members of the indorsing association.

While farm loan bonds issued by a Federal land bank are primarily secured by mortgages or Government obligations, the foregoing statement of the committee clearly shows that the Congress intended that the capital, reserves, and earnings of Federal land banks and national farm loan associations would constitute additional protection for such bonds. In addition to the statements made by the committee, repeated references were made, during the course of the debates in the Senate and House at the time the act was being considered by the Congress, to the fact that the 5 per cent margin of stock provided for in the act was intended as a guarantee fund to absorb losses which would inevitably occur. These references to the debates in Congress indicate that the proponents of the act understood that the bondholders as creditors were to be given primary consideration,

and that their claim to the capital and surplus of national farm loan associations was superior to that of the retiring stockholder.

Section 21 of the act provides, in part, that every farm loan bond issued by a Federal land bank shall contain in the face thereof a certificate signed by the farm loan commissioner, to the effect that it is issued under the authority of the Federal farm loan act, has the approval in form and issue of the Federal Farm Loan Board, and is legal and regular in all respects; that it is issued against collateral security of United States Government bonds, *or indorsed first mortgages on farm lands*, at least equal in amount to the bonds issued; and that all Federal land banks are liable for the payment of each bond. It is evident from this provision that the Congress considered that the indorsement of mortgages by national farm loan associations was an important part of the security behind all bonds issued by Federal land banks.

In the light of the decisions of the courts, the statements which appeared in the report of the joint committee of the Senate and House of Representatives regarding the bill which it had prepared, and the provisions of the act which the Congress passed with this information before it, it is apparent that the right of a retiring borrower in the farm loan system to share in the distribution of its stock assets exists only after the debts of the association have been paid, and that he can not be paid in cash the par value of his shares at the time of the retirement of his loan if the association of which he is a member is unable to meet its outstanding obligations currently.

In the past, the important questions herein discussed have created much confusion and doubt in the Federal land bank system. The construction of the act, based upon an exhaustive study of the subject, has made the rights and obligations of the banks, the associations, and the borrowers clear and definite. These conclusions have been unanimously concurred in by the banks and their counsel. The interpretation of the law, however, is only one step in the matter. As

stated in the chapters of this report immediately following, it has been complemented by the classification of the associations in accordance with their financial condition, and by permitting the associations to enter into indemnity agreements with the banks under which they are given a reasonable opportunity to meet their obligations without impairing their usefulness. It is felt that, if the act is carefully followed in its entirety and the obligations of associations are liquidated as far as possible in accordance with the procedure outlined in the indemnity agreements, the financial condition of the associations will be materially strengthened. Associations in good condition with small or no matured obligations will be benefited in that they will not be obliged to bear, through the reduction of their dividends from the banks, any losses sustained by other associations until such associations have exhausted their resources available for the payment of their obligations.

This matter is of importance to the Federal land bank system because it is the very essence of real cooperation, which implies not only mutual interests and mutual privileges, but mutual responsibilities as well. One of the highest acts of cooperation performed by an association is the indorsement of the mortgages of its members, and one of its highest duties in carrying on that cooperation is the fulfillment of the obligation thus incurred in the event of default by the borrower. The mutuality of interest of all requires that the retiring borrower be not permitted to escape his share of responsibility for the obligations of the association incurred while he was a member and shift the entire burden to the remaining members, or, indirectly, to the other associations of the district. The discharge of duty by an association and its members in this connection is a part of real cooperation that is in the interest of borrowers, associations, and bank, alike. The strength and progress of the system—the greatest cooperative credit movement in the world—depend in large measure upon the fidelity with which its constituent parts make cooperation a real and living force in all its aspects. Devotion and loyalty to the best interests of the system demand no less.

Classification of National Farm Loan Associations.

The banks have worked out the practical application of the above-mentioned principles regarding the retirement of capital stock by first making a careful study of the financial condition of each association in their respective districts. When this study was completed the associations were classified by the respective banks on the basis of their condition, taking into consideration any indebtedness they may owe the bank and their ability to meet their obligations currently. Under the classification, when a borrower desires to pay off his loan in full to a Federal land bank and (*a*) the association through which the loan was made is in class 1, the association is entitled to receive the full proceeds of the stock subscribed for by it at the time the loan was made; (*b*) where the association is in class 2, the bank may pay to the association all or a portion of the proceeds of such stock, or withhold the entire proceeds; (*c*) where the association is in class 3 or 4, the bank retains the full amount of the proceeds of such retired stock and applies the same as a credit on the debts due by such association to the bank.

The secretary-treasurers of all associations in classes 2 and 3, where some or all of the proceeds of retired stock are being held by the bank, are required by the banks, when an application for a new loan is presented to the association to advise the applicant regarding its condition before the application is accepted. Associations in class 4 are not permitted to accept further applications for loans. These classifications, of course, are not permanent, as the associations will be reclassified periodically, or as their financial condition changes.

Indemnity Agreements.

The proper course to be followed with respect to the liability of national farm loan associations for loans made by Federal land banks has been a question that has been given exhaustive consideration by the board and the Federal land banks. As a result of the intensive study of this

problem, the Federal land banks are cooperating with the associations in their respective districts by entering into agreements with them for the purpose of minimizing losses and of obviating as far as possible the necessity for taking deficiency judgments against associations in connection with defaulted loans. Furthermore, much thought and study has been devoted to the form of these agreements. Recently the form has been standardized and with only minor changes has been adopted by each of the Federal land banks for use in their respective districts.

These agreements provide, in substance, that if there shall be a default under the terms of any mortgage indorsed by a national farm loan association, as a result of which it becomes necessary for the bank to acquire the mortgaged premises, an account shall be set up to which may be credited any moneys, otherwise payable to the association, as an indemnity against any loss that the bank may suffer in the final disposition of the property. Under such agreements the bank may proceed to dispose of the property for an amount which, in the opinion of the bank, is its fair value. If the sale price of the land so disposed of is less than the bank's investment, the deficiency is charged to the account. If the property sells for more than the bank's investment, the profits are credited to the association's account to the extent necessary to offset any losses on account of defaults in other loans made to its members. If in the final settlement there remains any surplus, it is paid to the association to such extent as may be necessary to reimburse it for losses which it may have sustained in connection with loans coming within the operation of the agreement. Under this procedure the association's interests, as well as the bank's, are protected and the acquired real estate is sold in an orderly manner. A specimen form of this agreement is attached to this report as Exhibit A.

The plan represents genuine cooperation between the banks and the associations in meeting their problems. It preserves the liability of the associations and avoids the necessity of the taking and execution of deficiency judgments against them in cases of foreclosures. At the same time it not only gives them a reasonable opportunity to meet

their obligations, but also gives them the advantage, in instances where the bank in the disposal of real estate receives more than its investment, of a credit to be applied on the association's indebtedness to the bank where a loss is sustained in the sale of other properties. It is distinctly a mutual undertaking in the interests of the banks and the associations alike.

The Federal land banks generally have felt that better results are accomplished by conducting foreclosures and handling the sale of the properties when acquired, through their own organizations, enlisting the cooperation of the associations in disposing of the properties and protecting the rights of both the banks and the associations through the indemnity agreements. In one district, however, most of the associations have followed the practice of initiating foreclosure proceedings in connection with defaulted loans where the delinquent installments have been paid by them to the bank. On the basis of the reports received by them from the associations, 11 banks reported that on December 31, 1929, 201 associations owned a total of 332 farms, involving unpaid principal on loans in the amount of $890,152.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 389

THE KNOX NATIONAL FARM LOAN ASSOCIATION, A CORPORATION, AND THE FEDERAL LAND BANK OF LOUISVILLE, A CORPORATION,

Petitioners,

vs.

ARTHUR C. PHILLIPS.

BRIEF OF RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KNOX COUNTY, OHIO.

WILLIAM E. RICHARDSON,
Woodward Bldg.,
Washington, D. C.,
Attorney for Respondent.

Of Counsel:
HENRY C. DEVIN,
Mt. Vernon, Ohio.

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ARTHUR C. PHILLIPS,

Respondent.

BRIEF OF RESPONDENT, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KNOX COUNTY, OHIO.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Reasons for Denying the Writ.

Among the reasons which will occur to the Court for the denial of the writ prayed for by this petition, we direct especial attention to the following:

1. Every question that calls for consideration in this case has been passed upon by the several courts of the State of Ohio, beginning with the court of original jurisdiction,

the Court of Common Pleas of Knox County, Ohio, next the Court of Appeals, and finally, upon motion to certify the record of said Court of Appeals, by the Supreme Court of the State of Ohio.

2. These courts had complete and final jurisdiction of the parties and the subject matter of the case, upon every question that could be properly presented.

3. In each of the courts of the State of Ohio above mentioned, the decision was in favor of the respondent, and there is absolutely nothing about these decisions that is in conflict with Federal law, or the decisions of Federal courts.

4. The decision of these Ohio courts involved the construction and application of Ohio statutes to the instant case, including the finding that this action primarily incorporated a suit to quiet title, and that the facts and jurisdiction of the Court justified and permitted the appointment of a receiver for The Knox National Farm Loan Association. These decisions are within the powers of said States courts, and Federal courts are bound thereby.

5. If we concede and adopt the claims of petitioners as now made in their Brief filed herein, the only matters left in this litigation for review or consideration, if this writ were granted, would be a judgment rendered against the petitioner, The Knox National Farm Loan Association and in favor of Arthur C. Phillips for $265.00, and the order appointing a receiver of this confessedly insolvent debtor.

Therefore, the rendition of this judgment, and the appointment of a receiver, under the facts and circumstances disclosed by the record, is entirely within the powers of the State courts, that have already passed upon the questions involved, and Federal courts are bound thereby.

6. The judgment rendered in favor of the respondent in the instant case was awarded on account of the provisions of a written contract between The Knox National Farm Loan Association and the said respondent. Since the affairs of this insolvent corporation are to be liquidated and wound up, this judgment does *not* thereby accord him a "preference over other creditors" of the concern.

7. At no time heretofore in the progress of this litigation has the claim been presented by the petitioner, or considered by the several courts reviewing the matter, that there was error by these courts "in failing to recognize that all controversy relative to title had been eliminated upon respondent's payment of the entire mortgage debt during the interim between the filing of suit and the appointment of a receiver to liquidate the Association."

8. While the Federal Farm Loan Act provides one method for the liquidation and winding up of the affairs of a National Farm Loan Association, there is absolutely no provision that this method is *exclusive*. There is nothing in the provisions of the Federal Farm Loan Act that precludes or prevents the appointment by a State court of competent jurisdiction, and under proper facts and authority of law, of a receiver of an insolvent National Farm Loan Association, for the purpose of liquidating and winding up its affairs.

Argument and Supporting Authorities.

We believe that it may be assumed that this Court will not be inclined to grant the prayer of this petition, and issue the writ asked for, without some compelling reason.

Considering the comparatively small sum involved, there is manifest injustice in our client being dragged from one court to another, at considerable expense, time and effort,

in order to protect and preserve his rights, and this small judgment, from the onslaughts of these petitioners who are apparently willing and able to spend extravagant sums in fees and costs in their efforts to defeat his claim.

If we are right, this sort of thing should not go another step further, and the writ should not be allowed.

The legal proposition to the effect that the U. S. Supreme Court and Federal courts generally, are bound by decisions of State courts applying and construing State laws and State decisions has been so frequently and definitely decided by Federal courts that it is probably unnecessary to cite authority on the subject. But we ask the Court's indulgence, on account of our interest in our client's cause, and it may be put down to an excess of zeal.

Upon the legal propositions involved in the foregoing Reasons for Denying the Writ, Nos. 1 to 5, inclusive, we cite the following:

North Laramie Land Company v. *Hoffman*, 268 U. S. 276, 45 Sup. Ct. Rep. 491;

Central Union Telephone Company v. *City of Edwardsville*, 269 U. S. 190, 46 Sup. Ct. Rep. 90;

Live Oak Water Users Association v. *Railroad Commission of State of California*, 269 U. S. 354, 46 Sup. Ct. Rep. 149.

Referring to Reason No. 6, above set forth, we call attention to the fact that the evidence shows (R. 56, and Exhibit A), that respondent held the written agreement of The Knox National Farm Loan Association to apply $265.00 to the payment of his mortgage loan when and if he paid the balance. There was a simple contract to be enforced, and it was not even necessary for the State courts to consider, apply or construe the provisions of the Federal law pertaining to Farm Loan Associations. Therefore, it does

not appear that any Federal question was expressly or necessarily decided.

In support, we cite:

Whitney v. *People of State of California*, 274 U. S. 357, 47 Sup. Ct. Rep. 64;

Mellon v. *O'Neil*, 275 U. S. 212, 48 Sup. Ct. Rep. 62.

We submit, that the State courts had a right to consider respondent a simple contract creditor of an insolvent corporation, and as such he might sue for the appointment of a receiver.

See *Brown* v. *Cuba-American Jockey & Auto Club*, 2 F. (2d) 612.

If the foregoing decision is followed, we also submit that respondent had a right as a creditor and as a minority stockholder of the petitioner The Knox National Farm Loan Association to the appointment of a receiver for the liquidating and winding up of the affairs of that concern. Of course in the end, its assets would only be applied as far as they may go in satisfying all legal claims against the concern, including the judgment in favor of respondent.

As to the above mentioned Reason No. 7, we submit that petitioners are wrong in the "Specification of Error", No. 4, mentioned in their Brief, because the Court of Appeals of Knox County, Ohio, and the Supreme Court of Ohio had a right to consider that the entire controversy became subject to review under the petition in error, filed in said Court of Appeals (R. 104-105-106). As we view it, this petition in error carried up for review in the Court of Appeals, both the judgment of the Common Pleas Court of October 7, 1935 (R. 93-94-95), as well as the finding and order of November 18, 1935 (R. 96-97-98-99-100-101). However, we assert that this point was never raised heretofore in connection with claims asserted on behalf of these peti-

tioners, and therefore ought not to be considered on a petition for writ of certiorari to U. S. Supreme Court. See *Bothwell* v. *Bricklee-Nears Co.*, 275 U. S. 274, 48 Sup. Ct. Rep. 124.

Referring to Reason No. 8 for denying the writ, we observe that this covers one matter that both these petitioners have continually asserted, and have relied upon, in attempting to reverse the decisions of the Ohio courts in this matter. They have asserted that the provisions of the Federal Farm Loan Act confer *exclusive* jurisdiction upon the Farm Credit Administration to liquidate and wind up the affairs of an insolvent National Farm Loan Association. We strenuously dispute this claim, and submit that while the provisions of this law provide *one* method, there is no statement, or even inference, that the method is *exclusive*. An examination of the provisions of this law will at once indicate that the method is cumbersome and uncertain, and would be of little use or avail to the respondent in this case, assuming that his judgment is legal and proper. We believe that this whole question, of whether or not the method provided by the Federal Farm Loan Act, is *exclusive*, as far as the legal proposition is concerned, is fully covered by the recent decision of this Court in the case of the *United States* v. *Bank of New York and Trust Company*, 296 U. S. 463, 56 Sup. Ct. Rep. 343. The 5th syllabus of the case is as follows:

> "Grant of jurisdiction to one Court does not of itself imply that the jurisdiction is to be exclusive." (56 Sup. Ct. Rep. 343.)

The opinion in this case is by Chief Justice Hughes and on page 348, 56th Supreme Court Reporter, the opinion says:

> "The fact that the complainant in these suits is the United States does not justify a departure from the

rule which would otherwise be applicable. The government invokes and confers jurisdiction upon the District Court to entertain all suits of a civil nature brought by the United States. The government insists that the United States is entitled to have its claim determined in its own courts. But the grant of jurisdiction to the District Court in suits brought by the United States does not purport to confer exclusive jurisdiction. It is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive."

Answering the Brief of Petitioners.

We are not disposed to pass unnoticed the disposition indicated by the petitioners in an endeavor to assert facts that are not in the Record of this case, and certainly were never proven herein. We, therefore, submit in closing, that we have no knowledge of the truth of the statements made in petitioner's Brief in the two paragraphs following Sub-paragraph (d) of Paragraph 4 of their "Reasons for Granting the Writ", as set forth therein, particularly including the foot note designated by a star (*), and therefore deny, and object to, these assertions.

Conclusion.

WHEREFORE respondent prays that the petition filed herein for writ of certiorari be denied, and that the respondent may have all proper relief.

Respectfully submitted,

WILLIAM E. RICHARDSON,
Woodward Bldg.,
Washington, D. C.,
Attorney for Respondent.

Of Counsel:
HENRY C. DEVIN,
Mt. Vernon, Ohio.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 389

THE KNOX NATIONAL FARM LOAN ASSOCIATION, A CORPORATION, AND THE FEDERAL LAND BANK OF LOUISVILLE, A CORPORATION,

Petitioners,

vs.

ARTHUR C. PHILLIPS,

Respondent.

BRIEF ON BEHALF OF RESPONDENT.

WILLIAM E. RICHARDSON,
Woodward Building,
Washington, D. C.,
Attorney for Respondent.

Of Counsel:

HARVEY B. COX,
Washington, D. C.

HENRY C. DEVIN,
Mt. Vernon, Ohio.

SUPREME COURT OF THE UNITED STATES

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THE KNOX NATIONAL FARM LOAN ASSOCIATION, A CORPORATION, AND THE FEDERAL LAND BANK OF LOUISVILLE, A CORPORATION.

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BRIEF ON BEHALF OF RESPONDENT.

Statement of Facts.

Respondent adopts the statement of facts set forth on pages 2-10 of Petitioners' Brief, with the following suggestions:

First. That in using the term "insolvent", as descriptive of the status of the Association, it is intended to indicate impairment of capital. As shown by Petitioners' Brief, page 6, a deficiency of current assets [illegible] the Association's capital stock account [illegible], leaving the book value of all outstanding stock [illegible] of par.

Second. The proceeding initiated by the filing of the original complaint was in equity and prayed equitable relief [illegible]. As such the final decree now for review was based

upon the original petition, plus such supplementary matters as transpired during the progress of the suit, and which by proper proceeding were made a part of the record. Under an appropriate interlocutory order, respondent paid in cash the balance of $265.00 necessary to complete a full cash payment to the Federal Land Bank, whereupon the mortgage was released of record and no issue remained in this litigation between respondent and the Federal Land Bank, an original defendant, and that Bank thereupon cancelled its shares in that amount issued to the Association, and under the terms of its collateral agreement applied the par value of those shares to the Association's general indebtedness to the Bank. It does not appear, so far as we have been able to learn from the record, what disposition the Association made of its shares issued to the respondent, and which were retained by the Association when the loan was made under a receipt issued to him by the Association, containing the following provisions:

> (a) "This stock is being held by this association pursuant to the provisions of the Federal Farm Loan Act, as collateral security for the payment of the loan."
>
> (b) "Notice to borrower.—This receipt represents your investment in stock on which dividends will be paid. It will be accepted at face value on final payment of loan" (R. 71).

It does not appear from the record whether any other National Farm Loan Association issued receipts of similar tenor.

The Questions Involved.

1. Do the provisions of Sections 721 and 733 of the Federal Farm Loan Act, providing (a) that when the Bank receives payment in full for its loan the stock in the Bank issued to the Association "shall be paid off and retired", and that "in such case the National Farm Loan Associa-

tion shall pay off at par and retire the corresponding shares of its stock which were issued when said Land Bank stock was issued": and (b) the provisions of Section 733 dealing with the purchase and retirement of Association stock issued to individuals that "said capital stock shall be paid off at par and retired upon full payment of said loan", are operative when the book value of the stock is less than par?

2. Whether the contract evidenced by the receipt, whereby the Association agreed that the stock would be accepted at face value on final payment of the loan, has been breached, does respondent thereby have a right of action for the breach to the extent of the par value of the stock?

3. If such a contract creates rights in the stockholder additional to those accorded by the Act, is it *ultra vires* as to such excess?

4. Can an Association, which continues to engage in the business of making new loans, selling its remaining capital stock at par, urge in defense of this action the unfairness to other stockholders of the redemption of this stock at par?

5. Respondent's stock having been pledged as collateral security for *his* loan, which has now been paid, is, unless the provisions of the Act for the cancellation and redemption of that stock are applicable, entitled to receive his shares and remains a stockholder of the Association. The same situation will exist as to succeeding borrowers when their loans are liquidated. Is it the intent of the Farm Loan Act to permit these Associations to be managed and perhaps controlled by groups of stockholders who have ceased to be borrowers?

6. Are the provisions of Section 961 of the Act covering the dissolution and liquidation of National Farm Loan

Associations exclusive or cumulative to the exercise of such jurisdiction by the Courts, and if exclusive should such Associations be conclusively deemed solvent until their operations are terminated by a finding of insolvency by the Farm Credit Administration?

Argument.

1. The main question presented by Petitioners' Brief is the construction of Section 721 and Section 733 of the U. S. Code, originally enacted in the Federal Farm Loan Act, Section 721 provides for the subscription to stock of the Federal Land Bank by the Association to the amount of five per cent of each loan, provides that such stock shall be held by the bank as collateral "for the repayment of said loan" and contains a mandatory provision that it shall be paid off and retired upon the full payment of the particular loan. It then requires that "in such case the National Farm Loan Association shall pay off at par and retire the corresponding shares of its stock which were issued when said Land Bank stock was issued."

Section 733 relates to membership in the Association. It provides that "no persons but borrowers on farm land mortgages shall be members or shareholders of National Farm Loan Associations." It then provides for the sale of stock to borrowers in an amount of five per cent of their loans. Such stock is to be held as collateral security "for the repayment of said loan", but borrowers receive dividends while the stock is outstanding. It provides that "said capital stock shall be paid off at par and retired upon full payment of said loan."

These provisions must be given effect in determining the intent of Congress. From them we deduce: (1) That it was intended to equalize and correlate the stock issued by the Land Bank to the Association and that issued by the Association to the individual. (2) That the operation of the

Association was to be mutual. Its management was by other provisions of the law entrusted to its stockholders who have full voting powers as usual in corporations. It therefore provides that no persons other than borrowers shall be members or shareholders. The relation between this provision and the mandatory redemption of stock when a stockholder ceases to be a borrower is obvious. The stock in the Association is held as collateral by the Association, but voted by the members. It is held solely as security for the individual loan owing by its stockholder. When that loan is paid the Association can no longer retain the collateral. If the Association continues in business, as this Association is now engaged, making new loans and receiving full payment of its loans, but unable or unwilling to cancel and redeem its outstanding stock, a situation will inevitably arise whereby its management will be controlled by stockholders who are not borrowers and the mutuality of the Association will be destroyed.

We understand that this supposition may be contraverted by counsel for petitioners, who take the position that although the loan is paid in full and the stock in the Association is not redeemed, the stockholder has ceased to be a stockholder and will be unable to exercise his right to vote the shares standing in his name. This position is, however, untenable. A corporation cannot cancel stock, which is merely evidence of the shareholder's ownership of a proportionate interest in the corporation, and prevent the exercise of the rights of the shareholder in the management of the corporation, without paying him the value of his shares under some adequate provision of law authorizing stock redemption. If the provisions of the Act directing the Association to redeem the stock at par are inapplicable, as petitioners claim, because Congress did not intend this provision to apply to cases involving impaired capital, then

the related and dependent provisions are inapplicable and there can be no redemption, there can be no cancellation, and respondent remains a shareholder entitled to his proportionate voice in the management of the corporation.

It is inconceivable that Congress should have intended to impose upon a shareholder under such conditions a possible loss of the full book value of his stock, and, as of the date the Act was passed, a double liability to creditors of the Association, prohibit his sale of the stock, render it impossible for him to cease to be a shareholder, involve him in future operations of the company which might result disastrously, but deny him a voice in its affairs.

We have not referred to the cases dealing with this subject because we believe that they are answered by the foregoing considerations in so far as they support the petitioners' claim.

2. In addition to the provisions of the statute, this particular Association issued a receipt for this stock which constituted a contract between the parties. The opinion of the Court of Appeals, now under review, was based specifically upon the theory that the judgment for $265.00 entered against the Association was properly based upon this contract.

The only defense to this claim is apparently that such a contract, if exceeding the provisions of the Act, would be *ultra vires*.

It does not appear whether such contracts were entered into by other Associations with their stockholders, or by this Association with other individual stockholders. Whether the decision of the question in this case will affect other cases is uncertain. It was peculiarly within the province of the State Court to consider this question of contract and the opinion below shows that it was very thoroughly considered. We submit this phase of the case upon the opinion of that Court.

3. The Association has continued in business, making new loans and selling its capital stock to new borrowers at par. We are advised that more than $100,000.00 in loans have been made during the pendency of the present suit. It is urged by the petitioners that to redeem respondent's stock at par would be unfair and is not contemplated by the Act because its book value is slightly less than par. It might with equal justice be urged that the Association could not continue to sell its stock at par to present borrowers, and certainly whatever unfairness might result to existing stockholders from the redemption of respondent's stock at par would be exactly equalized by the sale to a new borrower of the same number of shares at par.

An examination of this law forces one to the conclusion that regardless of the actual book value of the stock of the Land Bank or of the Association, and whatever dividends these stocks may pay, and whatever the actual value may be, Congress has adopted a policy of fixing par as a basis for the sale and redemption of the stock and so long as the Association continues in the business of making loans, the complicated system of accounting and credit is based upon the fictitious par value, and that the purchaser is by the mandatory provision of the law required to buy his stock at this value, whether it is worth fifty per cent or two hundred per cent of par, open market sales of stock are absolutely barred, and redemption must be at the same fictitious value.

In conclusion, and bearing directly upon the foregoing, is a question which is fundamental in this case, to-wit, what effect must be given the provision of the Federal Farm Loan Act (Section 961, U. S. Code), covering the matter of insolvency and receivership? That section is found in full on page 81 of "The Laws Pertaining to Farm Mortgage Loans", filed as an appendix to the petitioners' brief. It provides that upon the conditions set forth therein the

Farm Credit Administration may declare such Associations insolvent, appoint a receiver, and that the affairs of the Association shall be liquidated. Obviously, portions of this Section were taken from the corresponding provisions of the National Banking Law, giving similar power to the Comptroller of the Currency. It is admitted that this Association has not been found to be insolvent by the Administration, although in the present case it was stipulated that the Association is insolvent. Apparently no claim is asserted here by petitioners that the jurisdiction of the Administration was exclusive, and that the Court had no power to make this finding. We therefore assume that since the petitioners represented by the law offices of the Federal Farm Administration have stipulated and rely upon the fact in this record, that the Court of the first instance properly found that the Association was insolvent, they have waived the immunity from judicial control over this issue which is fundamental in cases dealing with the similar provisions of the National Banking Law.

In conclusion, counsel respectfully state that their employment to prepare this brief occurred within the last few days and that the brief for the petitioners was filed so recently that a review of authorities is impossible.

Respectfully submitted,

WILLIAM E. RICHARDSON,
Woodward Building,
Washington, D. C.,
Attorney for Respondent.

Of Counsel:

HARVEY B. COX,
Washington, D. C.

HENRY C. DEVIN,
Mt. Vernon, Ohio.

SUPREME COURT OF THE UNITED STATES.

No. 389.—October Term, 1936.

The Knox National Farm Loan Association and the Federal Land Bank of Louisville, Petitioners, *vs.* Arthur C. Phillips, Respondent.	On Writ of Certiorari to the Court of Appeals of the State of Ohio.

[February 1, 1937.]

Mr. Justice Cardozo delivered the opinion of the Court.

The controversy in this case makes it necessary to determine the remedies available to a shareholder in an insolvent farm loan association upon the refusal of a demand for the retirement of his shares.

Respondent is the owner of a farm in Knox County, Ohio. His vendors were members of the Knox National Farm Loan Association, a coöperative membership corporation chartered under federal law. Federal Farm Loan Act, July 7, 1916, c. 245, § 7, 39 Stat. 365; 12 U. S. C. § 711. Through that association they procured a loan from the Federal Land Bank of Louisville, giving a mortgage as security. Part of the proceeds of the loan (i.e., 5% thereof) they used for the purchase of stock in the coöperative association, there being a requirement of the statute that "any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan association to an amount equal to 5 per centum of the face of the desired loan, said subscription to be paid in cash upon the granting of the loan." Federal Farm Loan Act, § 8; 12 U. S. C. § 733; cf. § 9; 12 U. S. C. 745. The statutory plan has already been expounded in opinions of this court. *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180, 203; *Federal Land Bank* v. *Gaines*, 290 U. S. 247; *Federal Land Bank* v. *Priddy*, 295 U. S. 229.

Upon the purchase of the farm by respondent in October, 1927, he assumed the payment of the mortgage debt, succeeding at the same time to the interests of his vendors in the stock of the association and to the attendant liabilities. The shares were of the par value of $265. They had been pledged with the association, in accordance with the requirements of the statute (§ 8; 12 U. S. C. § 733) as security for the loan. The association on its part had subscribed for an equal amount of the shares of the federal land bank, the lender of the money, leaving the shares so subscribed for as a pledge for the security of the lender. This too was a procedure called for by the statute. Section 7; 12 U. S. C. § 721. From time to time thereafter there were payments on account with the result that the loan had been reduced by March, 1933, to $2122.46, at which time respondent made an effort to clear the farm of the mortgage and to put an end also to his liability as shareholder. To that end he paid the association $1857.46 to be transmitted to the bank, insisting that the deficiency ($265) be satisfied through the retirement of the shares. The bank accepted the payment as one upon account, but refused to discharge the mortgage without payment of the balance. At that time, by concession, the association was insolvent. Its capital was impaired; it was indebted to the bank upon other mortgage loans, being liable as endorser or otherwise when it borrows for a member (*Federal Land Bank* v. *Gaines*, supra); it had no moneys in its treasury wherewith the shares could be retired.

The courts took up the controversy. Respondent joined the bank and the association as defendants in a suit in the Court of Common Pleas of Knox County, Ohio. He prayed for judgment against the bank that the mortgage be held to have been cancelled and extinguished and for judgment against the association that the shares of stock be paid off and retired, and that the business of the association be wound up and liquidated. For answer, the bank and the association took the ground that the partial payment made was insufficient to discharge the mortgage; that there could be no retirement of the shares while the association was insolvent; that the state court was without jurisdiction to liquidate the business of the association, an instrumentality of the federal government, and that jurisdiction in that behalf resided in the federal government exclusively.

Two decrees were rendered by the Court of Common Pleas. The first, filed October 7, 1935, provides that the mortgage lien shall be canceled by the bank upon tender by the plaintiff of $265 in addition to the payment previously made, the tender to be kept good by payment into court. The second, filed November 18, 1935, directs the farm loan association to retire the respondent's shares, and gives him judgment against the association for the par value thereof. It appearing that the association was unable to pay the judgment by reason of insolvency, a receiver was appointed to take possession of the assets and liquidate the business, the association and its officers being required forthwith, upon the demand of the receiver, to surrender any property in their possession or under their control. From the decree of November 18, the defendants prosecuted an appeal to the Ohio Court of Appeals, which affirmed with an opinion. A petition for review by the Supreme Court of the state was submitted and denied. We granted certiorari to set at rest far-reaching questions as to the meaning and administration of an important Act of Congress.

At the outset a doubt as to our jurisdiction calls for scrutiny and judgment. The case being here after a decision of a state court, jurisdiction is not given us unless the decree to be reviewed is final. Judicial Code, § 237; 28 U. S. C., § 344. Respondent has been adjudged entitled to the payment of a specific sum of money, but he is also to have a receiver who is to liquidate a business, the court reserving the right to control the conduct of its officer and to rescind or modify its order. Does the appointment of a receiver postpone the stage of finality until his work is at an end?

The primary purpose of the suit was the recovery of a judgment for the par value of the shares. Any other relief prayed for or awarded was tributary to that recovery; it was a form of equitable execution to make collection possible. When the amount invested in the stock was adjudged to constitute a debt, whatever followed in the decree was auxiliary and modal. The Association and its officers were not directed to account, and to surrender what was found owing at the close of the accounting. They were directed to make delivery and to make delivery at once. We think they were subjected to a present obligation as immediate and absolute as if the assets were to be wrested from them by execution directed to

the sheriff. *Winthrop Iron Co.* v. *Meeker,* 109 U. S. 180, 183; *St. Louis, I. M. & S. R. R. Co.* v. *Southern Express Co.,* 108 U. S. 24, 28, 29; *Thomson* v. *Dean,* 7 Wall. 342; *McGourkey* v. *Toledo & Ohio Central Ry. Co.,* 146 U. S. 536; *Collins* v. *Miller,* 252 U. S. 364, 371; *Chase* v. *Driver,* 92 F. 780, 785; *City of Des Moines* v. *Des Moines Water Co.,* 230 F. 570, 573; *Victor Talking Machine Co.* v. *George,* 69 F. (2d) 871, 879.

Accepting jurisdiction, we are brought to a consideration of the merits.

A national farm loan association is a coöperative enterprise. Its members must subscribe for its shares to the extent of five per cent of the loan to be procured in their behalf. Federal Farm Loan Act, § 8; 12 U. S. C. § 733. The association in its turn, upon the procurement of the loan, subscribes to stock of the land bank to an equivalent extent. Section 7; 12 U. S. C. § 721. With few exceptions, the only assets which a farm loan association has or can have are the shares which it takes in the federal land bank to counterbalance the shares of its own stock taken by the borrower, together with dividends distributed by the bank, and reasonable charges for necessary expenses, not in excess of "1 per centum of the amount of the loan applied for." *Byrne* v. *Federal Land Bank,* 61 N. D. 265, 277; cf. § 11; 12 U. S. C. 761, subd. 3. To add to the protection of the bank and other creditors, the shareholders in the association are chargeable under the law as it stood at the date of these transactions with personal liability up to a designated maximum. "Shareholders of every national farm-loan association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." Section 9; 12 U. S. C. § 744.[1] Upon evidence that an association has failed to meet its obligations the Farm Credit Administration may declare it insolvent and appoint a receiver, subject to the proviso that this shall not be done until the total defaults shall amount to at least $150,000 in the federal

[1] The liability has been changed in respect of contracts, debts or engagements entered into after June 16, 1933, without affecting liabilities incurred before that time. Act of June 16, 1933, c. 98, § 72, 48 Stat. 271; 12 U. S. C. § 744 a.

land bank district, unless such association shall have been in default for a period of two years. Section 29; 12 U. S. C. § 961. There shall be no voluntary liquidation without the consent of the supervising federal authority. Section 29; 12 U. S. C. § 965.

The background has now been indicated against which we must view the question whether a member of an association who has paid his loan in full may have his shares retired and recover their par value when the association is insolvent. In support of such a recovery respondent relies upon two sections of the statute. By section 7 (12 U. S. C. § 721) an association borrowing from a land bank "shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan", the stock to be held by the bank as collateral security. By the same section, such stock [i.e., the stock of the land bank] shall be "paid off and retired upon full payment of the mortgage loan." If that is done, "the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued."[2] Complementary to that section is section 8 of the Act (12 U. S. C. § 733), which regulates the relation between the association and its members. Upon applying for a loan, the applicant "shall subscribe for shares of stock in such farm loan association to an amount equal to 5 per centum of the face of the desired loan", the subscription at his election to be paid out of the proceeds, and the stock to be held by the association as collateral security. "Said capital stock shall be paid off at par and retired upon full payment of said loan." *Ibid.*

These provisions for retirement, despite their apparent breadth, are not to be extended to a situation such as the one before us here, and this for two reasons.

[2] The following is the text of the section as embodied in § 721 of the United States Code: "Whenever any national farm loan association shall desire to secure for any member a loan on first mortgage from the Federal land bank of its district it shall subscribe for capital stock of said land bank to the amount of 5 per centum of such loan, such subscription to be paid in cash upon the granting of the loan by said land bank. Such capital stock shall be held by said land bank as collateral security for the payment of said loan, but said association shall be paid any dividends accruing and payable on said capital stock while it is outstanding. Such stock may, in the discretion of the directors, and with the approval of the Farm Credit Administration, be paid off at par and retired, and it shall be so paid off and retired upon full payment of the mortgage loan. In such case the national farm loan association shall pay off at par and retire the corresponding shares of its stock which were issued when said land bank stock was issued" (12 U. S. C. § 721).

In the first place, section 8 of the statute, as already pointed out, is complementary to section 7. We are to read the two together. The association is not to retire its own shares and repay to the subscriber the amount of his subscription until the land bank has retired the corresponding shares of bank stock subscribed for by the association, and has paid back to the association the par value thereof. Only thus can the association be put in funds wherewith to make payment to its own subscribers. The record makes it plain, however, that this indispensable condition has never been fulfilled. The bank refuses to retire the shares of bank stock subscribed for by the association upon the loan to the respondent, or to refund the subscriptions wholly or in part. The scheme of the statute would be fatally disrupted if the association could be held when the bank refused to pay.

In the second place, neither the bank nor the association is under a duty to retire stock when the association is insolvent, and thus to give to the withdrawing member through the return of his subscription a preference over others. The statute is misread if the sentences regulating withdrawal are taken out of the setting of a coöperative scheme and viewed in isolation. Under the law as it stood when respondent became a member, the shareholders were subjected to a personal liability for all the contracts, debts, and engagements of the association "to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." § 9; U. S. C. 744. The association is already in default in the payment of its mortgage debts, and already its capital is impaired. In such circumstances, to return to respondent the amount paid in and represented by his shares would frustrate the statutory mandate that the amount so paid in shall constitute a fund for the benefit of creditors to be supplemented in case of need by personal liability for as much more as the investment. Indeed, altogether apart from any pledge of personal liability, the whole structure of the association is built upon the implication of equal rights and duties on the part of the coöperating members. To permit a member to withdraw when the association is insolvent would be to cast upon his fellow members the responsibility for defaults for which all should answer ratably in proportion to their interests. To guard against that inequity the statute makes it clear that shares in the associa-

tion shall not be subject to retirement until the corresponding subscriptions to the land bank have been canceled and refunded. We are not required to determine whether a member of an association will have rights enforcible against the bank when the association has been wound up in accordance with the federal statute. Cf. § 29; 12 U. S. C. § 966. No such question is before us. Enough for present purposes that in the existing situation, with insolvency conceded, the shares of the association are not subject to withdrawal.

The conclusion thus arrived at is in accord with well considered opinions in North Dakota and Arkansas where the same question was involved. *Byrne* v. *Federal Land Bank, supra; Western Clay National Farm Loan Ass'n* v. *Lilly,* 189 Ark. 1004. It has the support of persuasive analogies in the law of building and loan associations, which have much in common with farm loan associations incorporated by act of Congress. The settled rule is that the shares of building and loan associations are not subject to retirement when the association is insolvent, and that any refund made at such a time may be reclaimed by a receiver. *Towle* v. *American Bldg., Loan & Inv. Society,* 61 Fed. 446; *Sullivan* v. *Stucky,* 86 Fed. 491, 943; *Coltrane* v. *Blake,* 113 Fed. 785; *Aldrich* v. *Gray,* 147 Fed. 453, 456; *Christian's Appeal,* 102 Pa. 184; *Colin* v. *Wellford,* 102 Va. 581; cf. *Fidelity Savings & Loan Association* v. *Burnet,* 65 F. (2d) 477, 479, 481.

In holding that a judgment for the par value of the shares is inconsistent with the federal statute and impliedly forbidden, we cut the ground away from the auxiliary receivership, which must fall with the judgment it was intended to enforce. To this we add, however, that a national farm loan association is an instrumentality of the federal government; that the time and manner of liquidation are governed by the federal statute; and that jurisdiction does not reside in the tribunals of a state to wind up the business of this governmental agency either by a receivership or otherwise. 12 U. S. C. § 931, 961; *Federal Land Bank* v. *Priddy, supra,* pp. 231, 234; *Cook County National Bank* v. *United States,* 107 U. S. 445, 448; *Easton* v. *Iowa,* 188 U. S. 220, 233; *Jennings* v. *U. S. F. & G. Co.,* 294 U. S. 216, 226; *Brusselback* v. *Chicago Joint Stock Land Bank,* 69 F. (2d) 598; *Partridge* v. *St. Louis Joint Stock Land Bank,* 76 F. (2d) 237; *Boyd* v. *Schneider,* 131 Fed. 223, 227.

Whether the respondent may vote upon his stock, after his mortgage has been paid in full, until the shares have been redeemed, and whether he has a remedy to compel the Farm Credit Administration to liquidate the business promptly, are questions that have been considered in the briefs, but that do not call for answer upon the record now before us.

The decree should be reversed and the cause remanded to the Court of Appeals of the State of Ohio for further proceedings not inconsistent with this opinion.

Ordered accordingly.

A true copy.

Test:

Clerk, Supreme Court, U. S.